S. HRG. 99-911

TRANSFERS AFFECTING THE PUEBLO OF SANTA ANA OF NEW MEXICO

AND

COW CREEK BAND OF UMPQUA INDIANS DISTRIBUTION OF JUDGMENT FUNDS

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 2504

TO AUTHORIZE CERTAIN TRANSFERS AFFECTING THE PUEBLO OF SANTA ANA IN NEW MEXICO, AND FOR OTHER PURPOSES

AND

H.R. 3214

TO PROVIDE FOR THE USE AND DISTRIBUTION OF FUNDS AWARDED TO THE COW CREEK BAND OF UMPQUA INDIANS IN UNITED STATES CLAIMS COURT DOCKET NUMBERED 53-81L, AND FOR OTHER PURPOSES

AUGUST 6, 1986
WASHINGTON, DC

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TRANSFERS AFFECTING THE PUEBLO OF SANTA ANA OF NEW MEXICO AND COW CREEK BAND OF UMPQUA INDIANS DISTRIBUTION OF JUDGMENT FUNDS

WEDNESDAY, AUGUST 6, 1986

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:07 a.m., in room 628, Dirksen Senate Office Building, Hon. Mark Andrews (chairman of the committee) presiding.

Present: Senator Andrews and Senator Gorton.

The CHAIRMAN. The committee will come to order. Our hearing this morning is on two bills; S. 2504, to authorize transfer of certain mineral rights from the United States to the Pueblo of Santa Ana, to make certain technical amendments in legislation previously enacted regarding the Pueblo lands, and to authorize the Pueblo to enter into a land exchange with the University of New Mexico; and H.R. 3214, to provide for the use and distribution of judgment funds awarded the Cow Creek Band of Umpqua Indians in Oregon.

[The text of S. 2504 and H.R. 3214 follows:]

II

99TH CONGRESS
2D SESSION

S. 2504

To authorize certain transfers affecting the Pueblo of Santa Ana in New Mexico, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 21 (legislative day, MAY 19), 1986

Mr. DOMENICI (for himself and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To authorize certain transfers affecting the Pueblo of Santa Ana in New Mexico, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

MINERAL RIGHTS HELD IN TRUST

SECTION 1. (a) All rights, title, and interests of the United States in the mineral estate of Section 19, Township 13 North, Range 4 East, New Mexico Principal Meridian, are hereby declared to be held by the United States in trust for the benefit of the Pueblo of Santa Ana.

(b) The United States hereby waives any claims the United States may have against the Pueblo of Santa Ana,

including any claims for trespass, arising out of, or related to, the removal or exploitation by the Pueblo of Santa Ana of any minerals underlying Section 19, Township 13 North, Range 4 East, New Mexico Principal Meridian before the date of enactment of this Act.

(c) The Pueblo of Santa Ana and anyone acting on behalf of, or under the authority of, the Pueblo of Santa Ana may enter upon any lands within Section 19, Township 13 North, Range 4 East, New Mexico Principal Meridian, for the purposes of mining or otherwise removing or exploiting any minerals in such lands only if—

(1) the Pueblo of Santa Ana holds legal title to the surface estate of such lands,

(2) legal title to the surface estate of such lands is held by any person for the benefit of the Pueblo of Santa Ana, or

(3) the person holding legal title to the surface estate of such lands provides written consent for such entry.

ADDITIONAL LANDS HELD IN TRUST; TECHNICAL AMENDMENTS

SEC. 2. (a) Public Law 95–498 is amended by striking out "That all right" after the enacting clause and inserting in lieu thereof "That (a) all right".

(b) Subsection (a) of the first section of Public Law 95–498 is amended—

(1) by striking out the comma after "northwest quarter" in the nineteenth line of the paragraph relating to Section 23, Township 13 North, Range 3 East, New Mexico Principal Meridian (92 Stat. 1673),

(2) by striking out "Rec. PP CL 10/10/62 and" in the paragraph relating to such Section 23,

(3) by striking out "northeast quarter, northeast quarter" in the fourth line of the paragraph relating to Section 25, Township 13 North, Range 3 East, New Mexico Principal Meridian (92 Stat. 1673) and inserting in lieu thereof "northeast quarter, southeast quarter",

(4) by striking out "7, 8 and bed" in the paragraph relating to Section 9, Township 13 North, Range 4 East, New Mexico Principal Meridian (92 Stat. 1674) and inserting in lieu thereof "7 and bed",

(5) by inserting the following new paragraph after the paragraph relating to Section 6, Township 14 North, Range 3, East New Mexico Principal Meridian (92 Stat. 1674):

"Section 36: Lots 1, 4, 8, 9,

Northeast quarter, northeast quarter,", and

(6) by inserting the following new paragraph after the paragraph relating to section 31 of Township 14 North, Range 4 East (92 Stat. 1675)":

"Section 32:

Southwest quarter, southwest quarter southeast quarter,".

(c) Section 4 of Public Law 95–498 is amended—

(1) by striking out "Nothing in this" in subsection (a) and inserting in lieu thereof "(1) Nothing in this", and

(2) by adding at the end of subsection (a) the following new paragraph:

"(2) The United States retains an easement of access for the purpose of operating and maintaining the Jemez Canyon Dam upon existing rights-of-way over the lands that are declared to be held in trust of the benefit of the Pueblo of Santa Ana under this Act. The Pueblo of Santa Ana shall enjoy full use of such rights-of-way to the extent such use does not interfere with the reasonable operation and maintenance of the Jemez Canyon Dam.".

(d) Subsection (a) of section 7 of Public Law 95–498 is amended by striking out "2004.05 acres" and inserting in lieu thereof "1678.05".

EXCHANGE OF LANDS

SEC. 3. (a)(1) Notwithstanding the provisions of the Act of August 19, 1935 (49 Stat. 659, chapter 559), or of the patent issued thereunder (Patent No. 1079219), the Regents of the University of New Mexico are hereby authorized to convey to the United States, and the United States shall

accept in trust for the benefit of the Pueblo of Santa Ana, all or any part of the following tracts of land, which were patented to such Regents under authority of the Act of August 19, 1935 (49 Stat. 659, chapter 559): Lots 7, 8, and 9 and the Northwest quarter of Section 30, Township 13 North, Range 4 East, New Mexico Principal Meridian, New Mexico, containing 218.3 acres, more or less.

(2) Upon the conveyance of any portion of the lands described in paragraph (1) to the United States in trust for the benefit of the Pueblo of Santa Ana, the restriction that the lands described in paragraph (1) be used for archeological purposes only, which is contained in the patent conveying the lands described in paragraph (1) to the Regents of the University of New Mexico pursuant to the Act of August 19, 1935 (49 Stat. 659, chapter 559), shall cease to be applicable to the portion of the lands described in paragraph (1) that is conveyed to the United States in trust for the benefit of the Pueblo of Santa Ana.

(3) If the Pueblo of Santa Ana determines to develop those lands conveyed under paragraph (1) that are located within 100 yards of the boundary of the Coronado State Monument archeological site, the Pueblo of Santa Ana shall—

(A) meet, and confer in good faith, with representatives of the Museum of New Mexico with respect to

the potential adverse impacts of such proposed development on the Coronado State Monument archeological site, in order to try to insure that any development of that portion of such lands is consistent with the existing use of such Monument;

(B) consider all mitigation measures proposed by the Museum of New Mexico that lessen the adverse impact of the proposed development and preserve the aesthetic and related values associated with such Monument's archeological resources; and

(C) to the maximum extent practicable and consistent with the development plan of the Pueblo of Santa Ana, take all reasonable measures that will mitigate any adverse impacts of the proposed development on that portion of such lands.

(b) The Pueblo of Santa Ana is hereby authorized to convey to the Regents of the University of New Mexico, and the Regents of the University of New Mexico are hereby authorized to accept from the Pueblo of Santa Ana, a parcel of land within the El Ranchito Grant owned by the Pueblo of Santa Ana pursuant to Patent No. 84386, dated October 18, 1909, in exchange for the lands conveyed to the Pueblo of Santa Ana under subsection (a).

(c)(1) By no later than the date that is 60 days after the date of enactment of this Act, the Secretary of the Interior

shall publish in the Federal Register the exact legal descriptions of the parcels to be conveyed under subsections (a) and (b), as such parcels are described by the terms of the Settlement Agreement agreed to by the Pueblo of Santa Ana, the Regents of the University of New Mexico, the United States of America, the State of New Mexico, the Museum of New Mexico, and the Park and Recreation Division of the New Mexico State Natural Resources Division on November 12, 1985.

(2) The conveyances authorized under subsections (a) and (b)—

(A) shall be made in accordance with the Settlement Agreement described in paragraph (1), and

(B) shall be made only after the legal descriptions of all lands to be conveyed under such subsections have been published in accordance with the requirements of paragraph (1).

GENERAL PROVISIONS

SEC. 4. (a)(1) Nothing in this Act shall deprive any person (other than the United States) of—

(A) any existing right of use, possession, contract right, interest, or title which that person may have in any of the trust lands within the purview of this Act, or

(B) any existing right of access to public domain lands over and across such trust lands.

(2) All existing mineral leases involving lands declared to be held in trust by this Act, including oil and gas leases, which may have been issued or approved pursuant to any other Federal law prior to the date of enactment of this Act shall remain in force and effect in accordance with the provisions of such other law.

(3) Notwithstanding any other provisions of law, all applications for mineral leases involving lands declared to be held in trust by this Act, including oil and gas leases, pending on the date of enactment of this Act shall be rejected and the advance rental payments returned to the applicants.

(b) Subject to the provisions of subsection (a), any property held in trust by reason of this Act for the benefit of the Pueblo of Santa Ana shall be administered in accordance with the laws and regulations applicable to other property held in trust by the United States for the Indian tribe of the Pueblo of Santa Ana.

(c)(1) All property conveyed to, or declared to be held by, the United States in trust for the benefit of the Pueblo of Santa Ana by reason of this Act, and all the receipts therefrom (including the receipts of any enterprises conducted thereon by the Pueblo of Santa Ana), shall be exempt from Federal, State, and local taxation so long as such property is held in trust by the United States. No distribution of such

receipts to tribal members of the Pueblo of Santa Ana shall be considered as—

(A) income or resources of such members for purposes of any such taxation, or

(B) income or resources for purposes of, or otherwise utilized as the basis for, denying or reducing the financial assistance or other benefits to which such member, or the household of such member, would otherwise be entitled to under the Social Security Act or under any other Federal program or federally assisted program.

(2) The provisions of this subsection shall apply, notwithstanding any other provision of law, unless such other provision of law specifically cites this subsection.

II

99TH CONGRESS
2D SESSION

H. R. 3214

IN THE SENATE OF THE UNITED STATES

MAY 8 (legislative day, MAY 5), 1986

Received; read twice and referred to the Select Committee on Indian Affairs

AN ACT

To provide for the use and distribution of funds awarded to the Cow Creek Band of Umpqua Indians in United States Claims Court docket numbered 53–81L, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Cow Creek Band of Umpqua Indians Distribution of Judgment Funds Act".

SEC. 2. DEFINITIONS.

For the purposes of this Act—

(1) the term "Secretary" shall mean the United States Secretary of the Interior;

(2) the term "Tribe" shall mean the Cow Creek Band of Umpqua Tribe of Indians, which was extended Federal recognition by the Act of December 29, 1982, Public Law 97–391;

(3) the term "Tribal member" shall mean any individual named in the Tribal roll that was published in the Tribe's answer to the United States' Interrogatory numbered 14 in United States Claims Court docket numbered 53–81L, and descendants of any individual named in such roll after determination of enrollment eligibility by the Tribe;

(4) the term "tribe's governing body" shall mean the governing body as determined by the Tribe's governing documents;

(5) the term "Tribal Council" shall mean the general membership of the Cow Creek Band of Umpqua Tribe of Indians convened in a meeting open to all Tribal members; and

(6) the term "elder" shall mean any Tribal member who reaches the age of fifty on or before December 31, 1985.

SEC. 3. JUDGMENT DISTRIBUTION PLAN.

Notwithstanding the Act entitled "An Act to provide for the use and distribution of funds appropriated in satisfaction of certain judgments of the Indian Claims Commission and

the United States Court of Claims, and for other purposes." and approved October 19, 1973 (25 U.S.C. 1401 et seq. as amended), or any plan prepared or promulgated by the Secretary of the Interior pursuant to such Act, the judgment funds awarded in United States Claims Court docket numbered 53–81L shall be distributed and used in the manner provided in this Act.

SEC. 4. DISTRIBUTION AND USE OF FUNDS.

(a) PRINCIPAL PRESERVED; NO PER CAPITA PAYMENTS.—The total judgment fund of $1,500,000, less attorney's fees and loan with the Bureau of Indian Affairs for expert witness testimony during the land claims case, will be set aside as the principal from which programs under this Act will be funded and will be maintained by the Secretary in trust for the Tribe. Only the interest earned on this principal may be used to fund such programs. There will be no per capita distribution of any funds, other than as specified in this Act.

(b) ELDERLY ASSISTANCE PROGRAM.—

(1) From the principal, the sum of $500,000 will be set aside for an Elderly Assistance Program. A one-time-only payment of $5,000 will be made to each Tribal elder as soon after January 1, 1986, as the following conditions have been met:

(A) A mechanism exists whereby the Tribe can request the release of funds from the Secretary in order to begin payments.

(B) A list of all Tribal members who are 50 years of age or older has been compiled and reviewed for accuracy by the Tribe's governing body and a financial distribution system has been established.

(2) Payments to Tribal elders shall be made according to the following formula:

(A) Payments of $5,000 will be made to the elders by age in descending order, beginning with the oldest elder, until the interest accumulated for one year on the $500,000 has been depleted below the sum of $5,000. Any interest remaining shall carry over to the following year for distribution hereunder in the next $5,000 payment.

(B) On or before January 1 of succeeding years payments of $5,000 will continue to be made to elders in descending order by age until the interest earned in such year on the $500,000 has been depleted below the sum of $5,000. Any interest remaining shall carry over to the following year for distribution hereunder in the next $5,000 payment.

(C) The distribution process will continue each year until every individual eligible for payment under this section have received a one-time-only payment of $5,000. When all payments have been completed, the principal sum of $500,000 and any remaining interest will be distributed to other Tribal programs as provided in this Act.

(3) If any Tribal member eligible for an elderly assistance payment should die before receiving such payment, the money which would have been paid to that individual will be returned to the Elderly Assistance Program fund for distribution in accordance with this section.

(4) Any individual who feels he has been unfairly denied the right to take part in this program, and who has reached the age of fifty on or before December 31, 1985, may appeal to the Secretary.

(c) HIGHER EDUCATION AND VOCATIONAL TRAINING PROGRAM.—

(1) From the principal, the sum of $100,000 will be set aside. Interest earned on such sum will be utilized to provide scholarships to Tribal members pursuing college, university, or professional education or training. Tribal members seeking vocational training also will be funded from this program, although Adult

Vocational Training funding available through a contract with the Bureau of Indian Affairs will be utilized first if an individual is eligible and there is sufficient funding in such program.

(2) When the Elderly Assistance Program under section 4(b) of this Act has been completed, the principal funding for the higher education and vocational training program shall be increased to $250,000.

(d) HOUSING ASSISTANCE PROGRAM.—

(1) From the principal, the sum of $100,000 will be set aside for a Housing Assistance Program for Tribal members. Such funding may be added to any existing tribal Housing Improvement Programs to supplement them or it may be used in a separate Housing Assistance Program to be established by the Tribe's governing body. Such funding may be used for any of the following purposes—

(A) rehabilitation of existing homes;

(B) emergency repairs to existing homes;

(C) down payments on new or previously occupied homes; or

(D) purchase or construction of new homes.

If sufficient funding is not available in a given year for purchase or construction of a new home, the governing

body may direct the funding to any of the other authorized purposes.

(2) When the Elderly Assistance Program under section 4(b) of this Act has been completed, the principal funding for the housing assistance program shall be increased to $250,000.

(e) ECONOMIC DEVELOPMENT AND TRIBAL CENTER.—

(1) From the principal, the sum of $250,000 will be set aside for Economic Development and, if other funding is not available or not adequate, for the construction and maintenance of a Tribal Center. Economic development funds under this subsection may be used for the following purposes:

(A) Land acquisition for business or other activities which would benefit the Tribe economically or provide employment for Tribal members. At least 50 per centum of all individuals employed in a Tribally operated business acquired or operated under this subsection shall be Tribal members or the spouses of Tribal members as available and qualified. As new positions open or existing ones are vacated, preference will be given to Tribal members or their spouses. If insufficient numbers of qualified Tribal members or their spouses are

available to fill at least 50 per centum of the positions offered, non-Tribal members may be considered for employment.

(B) Business development for the Tribe, including collateralization of loans for the purchase or operation of businesses, matching funds for economic development grants, joint venture partnership, and other similar ventures which can be expected to produce profits for the Tribe or to employ Tribal members.

(C) Reservation activities, including forest management, wildlife management and enhancement of wildlife habitats, stream enhancement, and development of recreational areas. The Tribe's governing body shall determine what reservation activities will be funded from economic development funds under this clause.

(D) Construction, support, or maintenance of a Tribal Center.

(2) When the Elderly Assistance Program under section 4(b) of this Act has been completed, the principal funding available for economic development and a tribal center shall be increased to $400,000.

(f) MISCELLANEOUS TRIBAL ACTIVITIES.—

(1) From the principal, the sum of $50,000 will be set aside for miscellaneous tribal activities as determined by the Tribe's governing body. Such funds shall be used to finance the following activities:

(A) Operating costs of the Tribe's governing body, including travel, telephone, and other expenses incurred in the conduct of the Tribe's affairs.

(B) Legal fees incurred in the conduct of tribal affairs, tribal businesses or other tribal activities, recommended by the Tribe's governing body and approved by the Tribal Council.

(2) When the Elderly Assistance Program under section 4(b) of this Act has been completed, the principal funding for miscellaneous tribal activities shall be increased to $100,000.

(g) EVERGREEN PROPERTY; COLLATERALIZATION OF LOAN WITH BUREAU OF INDIAN AFFAIRS.—

(1) From the principal the sum of $315,000 shall be set aside as collateral on the property known as Evergreen. The interest from such amount shall be utilized for payments on the loan property. If the Tribe's governing body determines that the interest and income together are sufficient to pay off the loan more quickly, it may commit the full interest from the

$315,000 to repayment of the loan until such time as loan payments are completed or the income from the property is sufficient to complete the loan payments.

(2) When the loan has been paid or the income from the property is sufficient to pay the loan, the principal amount of $315,000 shall be redistributed to the Housing Assistance Program, Higher Education and Vocational Training Program, and Economic Development and Tribal Center Program in proportions to be determined by the Tribe's governing body.

(h) GENERAL CONDITIONS.—The following conditions will apply to the management and use of the judgment funds:

(1) The principal shall not be used. Only the interest from the funds will be used to finance tribal programs.

(2) In order to allocate principal amounts of $500,000 to the Elderly Assistance Program, $100,000 to the Housing Assistance Program, $100,000 to the Higher Education and Vocational Training Program, $250,000 to the Economic Development and Tribal Center Program, and $50,000 to the Miscellaneous Program, the required sum from the interest earned on the principal from the dates of investment will be added to the principal amount.

(3) The judgment funds will be maintained by the Secretary in interest-bearing accounts in trust for the Tribe.

(4) No amount greater than 10 per centum of the interest earned on the principal may be used for the administrative costs of any of the above programs, except as provided in section 4(h)(5) below.

(5) No Service Area is implied or imposed under any program under this Act. If the costs of administering any program under this Act for the benefit of a tribal member living outside the Tribe's Indian Health Service Area are greater than 10 per centum of the interest earned thereon, the Tribe's governing body may authorize the expenditure of such funds for that program, but in carrying out the program shall give priority to individuals within the Tribe's IHS Service Area.

(6) The Tribe's governing body may at any time after enactment of this Act declare a dividend to Tribal members from the profits from any business enterprise of the Tribe. Prior to declaring or distributing dividends, however, the Tribe's governing body must first take into consideration the effect of such declaration or distribution of dividends on future operating costs and proposed business expansions. Profits from business en-

terprises may also be distributed back into any of the programs established by section 4 of this Act, provided that future operating costs and proposed expansion costs are first set aside. Any such distribution back into the programs under this Act shall be proportional to the percentage of principal then being allocated hereunder.

SEC. 5. TRIBAL MEMBERSHIP.

Section 5 of the Act of December 29, 1982 (Public Law 97–391) is amended to read as follows:

"SEC. 5. (a) The members of the Cow Creek Band of Umpqua Indians shall consist of every individual named in the Tribal roll that was published in the Tribe's answer to the United States Interrogatory numbered 14 in the United States Claims Court docket numbered 53–81L, as supplemented through additional enrollments through December 29, 1982, and descendants of any individuals named in such roll born on or before the date of enactment of this Act. Thereafter, membership in the Tribe shall be determined as provided in the Tribal Constitution, By-laws, and Membership Ordinance.

"(b) Membership in the Tribe pursuant to subsection (a) shall not entitle an individual who shared in the distribution of funds under the Act of August 13, 1954 (25 U.S.C. 564 et seq.) or the Act of August 13, 1954 (25 U.S.C. 691 et seq.)

to participate in any distribution of funds pursuant to a judgment under the Act approved May 26, 1980 (94 Stat. 372).".

SEC. 6. ELIGIBILITY OF NON-TRIBAL MEMBERS.

(a) Notwithstanding any provision of this Act, non-Tribal members shall be eligible to participate in the programs established pursuant to section 4 (c) and (d) of this Act if they are within that group of persons described in section 4(a) of the Act of May 26, 1980 (Public Law 96–251) and satisfy the enrollment requirements of section 6(b) of this Act.

(b) In order to qualify as an eligible non-tribal member under section 6(a), non-tribal members must submit an enrollment application to the tribe within 180 days of the date of this Act in which they must establish that they satisfy the criteria of section 6(a). All decisions on such application shall be made by the Tribe: *Provided,* That any applicant who has been denied eligibility by the Tribe shall have the right to appeal to the Secretary of the Interior.

Passed the House of Representatives May 6, 1986.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

The CHAIRMAN. Our first witness today will be Jeff Bingaman, junior Senator from New Mexico, to testify on S. 2504, following by our esteemed colleague form the House side, Congressman James Weaver of Oregon to testify on H.R. 3214. We'll then return to the Santa Ana legislation and conclude with testimony on Cow Creek.

Senator Bingaman, good to have you here.

STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Senator BINGAMAN. Thank you, Mr. Chairman. I appreciate the chance to appear today in support of this legislation.

The legislation that we're involved with today, affecting the Santa Ana Pueblo, would try to clarify some of the outstanding land issues related to that Pueblo's land. Senator Domenici and I are cosponsoring the bill. I believe he'll be here in the near future to give his own views on it. It's also being introduced on the House side by the House Members of the New Mexico delegation.

I appreciate this committee giving us this hearing on short notice. We worked with the Pueblo since the last Congress trying to come up with what we consider a fair compromise, and I believe that the bill accomplishes that. The bill has four parts, and I'd like to just briefly highlight each.

The first section conveys to the Pueblo the mineral interests in a tract of land that the Pueblo purchased from private landowners for the express purpose of a tribally owned sand and gravel operation. At the time the Pueblo purchased the land in 1981, it was believed that the gravel was not a mineral within the terms of the Stock-Raising Homestead Act.

The Supreme Court, in a decision in 1983, held that coal and other minerals, as used in that act, does include gravel. And accordingly, the decision has removed the Pueblo's title to the gravel and undercut the viability of their sand and gravel operation.

With the transfer of the mineral title, the Pueblo would, once again, be able to continue this enterprise which promotes employment for the Pueblo and economic development for the State. The conveyance of the State. The conveyance of the mineral interests is made to the United States to be held in trust for the Pueblo. The overriding policy consideration, I believe, should be to promote the economic self-sufficiency of the Pueblo.

On this issue, Mr. Chairman, I've just been informed this morning that the Department of the Interior may have some concerns about this transfer, and obviously—I think speaking for myself and the other members of the New Mexico delegation—we would like to explore what those are and determine whether those concerns can be allayed before the committee acts, if possible.

The second section of the bill corrects a legal description of the land which was conveyed to the Pueblo pursuant to Public Law 95–498.

The third section of the bill authorizes the exchange of lands between the Santa Ana Pueblo and the University of New Mexico due to the trespass involved with the construction of the Coronado Monument on that land.

The parties, through very extensive litigation on this trespass issue, have reached an agreement and decided how they would resolve it. Pursuant to that agreement, the Pueblo has the responsibility of coming to Congress and seeking congressional approval for this transfer.

The transfer involves 26.57 acres that would go to the University of New Mexico, and then in exchange, the Pueblo would receive 120 acres just west of the park and the monument. I believe that also there would be some scholarships, some tuition scholarships involved for Santa Ana students as part of this settlement with the University of New Mexico.

Finally, the fourth section of the bill just assures that all preexisting legal rights are protected and any mineral leases, including the current oil and gas leases, continue in full effect.

Mr. Chairman, I believe—I've also been informed this morning that the Pueblo may have some suggested changes in the legislation that they will urge on the committee. I'd appreciate the chance to respond to the committee to those suggested changes. I've not had a chance to review them in detail or to take a position on them at this time. The legislation, as agreed to by our delegation of Congressmen and Senators from New Mexico, is as it's presented to the committee today. Whatever changes might be suggested, we would like a chance to react to.

[Prepared statement of Senator Bingaman appears in the appendix.]

The CHAIRMAN. Thank you, Senator, for your very candid assessment of this bill and indicating your support of it. The only prepared testimony, the prepared testimony that we've looked at closely, is that of Lieutenant Governor Lujan, and he points out that the Pueblo is seeking three amendments to the bill.

The first one is the extension of the reservation boundaries to include the lands acquired as a result of the settlement; the second one is the transfer of a small parcel of land from the Santa Ana to the Zia Pueblo; and the third one is the authorization of the tribe to enter into 99 year leases on its land.

Have you had an opportunity to study these amendments? Do you have a position on them?

Senator BINGAMAN. Well, I have not. The subject of the 99 year lease did come up when we discussed it in our—with the Members of Congress from New Mexico and there was some concern about that provision. So I would appreciate it if we could have a chance to—I could have a chance to discuss it with my cosponsor, Senator Domenici, and also with the House Members who are sponsoring this bill on the House side before we take a formal position on those amendments.

The CHAIRMAN. Well, the purpose, Senator, as you know of these hearings is to get as much accurate information on the record as we can. We'll keep the record open for your convenience so you can comment and your colleagues in the Congress can comment on the different requests for changes that have been brought up in this testimony. And, of course, the sooner we can conclude your comments, which we'll wait for before we do any action on the bill, the sooner that happens, of course, the sooner we can move that bill.

Senator Gorton.

Senator GORTON. No questions.
The CHAIRMAN. Thank you, Senator.
Senator BINGAMAN. Thank you, Mr. Chairman. I appreciate it.
[Material to be supplied follows:]

SENATOR PETE V. DOMENICI

SANTA ANA PUEBLO LAND TRANSFERS

August 6, 1986

SUMMARY OF BILL

- This bill transfers gravel rights to the Pueblo of Santa Ana. The tribe purchased land with gravel in 1981 from private individuals. In 1983, the Supreme Court ruled that gravel rights must be transfered as a mineral right. This change in the legal status of the gravel changes the value of the purchased land which was sought precisely for its rich gravel resources. This bill transfers the gravel to the Pueblo.

- There are technical amendments to correct the descriptions in P. L. 95-498. There is no net increase or decrease in acreage to the pueblo.

- Parts of Coronado Monument near Bernalillo were found to be in trespass on Santa Ana Pueblo land. The University of New Mexico and the pueblo have reached an agreement which is ratified by this bill. Under the terms of the agreement, the University of New Mexico will be allowed to convey about 120 acres of land on the west and north sides of the monument to the pueblo in exchange for the Pueblo's land (about 26 acres) under use at the Coronado State Monument.

ADDITIONAL REQUESTS OF THE PUEBLO

In addition to the agreement among the members of the New Mexico Congressional Delegation on the basic provisions of S. 2504 as described above, the Pueblo of Santa Ana now wants these provisions:

- A technical correction to transfer 18 acres of land erroneously placed in trust for Santa Ana in 1961. The land in question belongs to the Pueblo of Zia.

- The placement in trust of the lands transferred to the Pueblo of Santa Ana to settle the Coronado Monument dispute. These lands are adjacent to the existing boundaries.

- A 99-year lease for a portion of pueblo lands to be leased to a gypsum wallboard company. This extension would add 49 years to the current ability of the pueblo to lease its lands under current law which allows a 50-year lease.

  25 USC 415 provides that the Secretary of Interior shall review and approve all applications for leases on Indian land. These leases are allowed for a period of 25 years, with one renewal for 25 years, or 50 years total.

The CHAIRMAN. Our next witness will be the Honorable Jim Weaver, my former colleague over in the House of Representatives. Jim, good to have you here.

STATEMENT OF HON. JAMES WEAVER, MEMBER OF CONGRESS FROM OREGON

Mr. WEAVER. Thank you very much, Mr. Chairman. I appreciate the opportunity to testify. Senator Gorton. I have with me Dennis Whittlesey, the attorney for the Cow Creek Band of Umpqua Indians.

In the interest of frugality—and I commend this strongly—I have the testimony of Sue Shaffer, the chairperson of the Cow Creek Band, and I am, in effect, her surrogate here today. If that could be placed in the record——

The CHAIRMAN. That will be put in the record, Congressman.

Mr. WEAVER. As well as the testimony of Stephen Dow Beckham, the historian, who gives background in the issue.

The CHAIRMAN. As will that statement.

Mr. WEAVER. I thank you, Mr. Chairman.

Mr. Chairman, in 1980, Congress enacted Public Law 96-251, enabling the Cow Creek Band of Umpqua Indians, a tribe whose ancestral homelands are in my congressional district in southwestern Oregon, to pursue a taking claim in the U.S. Claims Court. Pursuant to a settlement agreement, the court granted an award of $1,500,000 to the tribe on June 12, 1984. Funds to satisfy the award were appropriated by the Congress on August 21, 1984.

In the interim, Federal recognition was restored to the Cow Creeks through the enactment of Public Law 97-391 on December 29, 1982. The tribe subsequently developed a judgment fund distribution plan providing that the entire judgment fund, less costs of pursuing the claim, would be set aside as the principal from which specified tribal programs would be funded.

The interest earned on this principal would be committed to elderly assistance, higher education and vocational training, housing assistance, economic development, and other tribal programs.

And I want to tell you, Mr. Chairman, I strongly support that judgment fund. I was very proud of the Cow Creeks when they did this because, after all, the whole point of recognizing of a tribe is to bring them together, to have them work together, to give them a common feeling and common goals. Per capita distribution destroys that, and the legacy of per capita distributions is a dismal one.

Small, one-time payments may provide a minimal short-term benefit to the individuals receiving them, but they do not further the long-term interests either of those persons or of the tribe. H.R. 3214 avoids that result by establishing a variety of programs that will assist all tribal members and promotye tribal self-sufficiency.

Furthermore, this bill will add no costs to State or local governments, and will actually increase receipts to the Federal Government by an estimated $20,000 to $30,000 annually beginning in 1989 from interest payments on a BIA loan to the tribe to purchase property in southwestern Oregon.

The House Interior Committee held a hearing on H.R. 3214 on December 10, 1985. I offered three amendments to the bill at the

March 19 markup to address concerns that had been raised by the administration and some witnesses at the hearing. I believe those concerns were valid and that our amendments strengthened the bill.

The first amendment redefined the term "tribe's governing body" from its previous "Board of Directors" to "the governing body as determined by the tribe's governing documents," in order to avoid any potential conflict between this legislation and tribal governing documents.

The second amendment defined the membership of the Cow Creek Tribe by specifiying the base roll which constitutes the tribe and providing that tribal membership shall subsequently be determined by tribal governing documents. This not only resolves the issue of the roll that was referred to in the 1982 act, but also avoids a situation where Congress permanently closes the tribal roll.

The third amendment allowed nontribal members who can meet the descendancy and other requirements of the 1980 jurisdictional act to participate in the education and housing programs. The bill passed the House by voice vote on May 6.

I thank the committee for this privilege to testify before you.

[Prepared statement of Mr. Weaver appears in the appendix.]

The CHAIRMAN. Thank you very much, Congressman. I note that under the House amendments, participation in the tribal programs is extended to nonmembers who can prove their lineal descendancy from the 1853 band, with the exception of the elderly assistance program.

Why is this program excepted from nonmember participation?

Mr. WEAVER. Mr. Chairman, the point of the elderly assistance program was that it should be given only on a one-time basis, and that is that only to those 50 years of age or older on January 1, 1986. So, therefore, as it was a one-time basis, it was felt that it should go only to members enrolled on the tribal rolls at that time.

The CHAIRMAN. The Interior Department's statement takes the position that not all members of the Cow Creek Band should share in the judgment fund's programs benefits.

What is your view of the Department's position?

Mr. WEAVER. I have been rather bewildered by some of the actions of the BIA, Mr. Chairman, and I have not clearly understood their motivation or their goals. I just think on this we've got a wonderful program forged by the Tribe itself, a program that will keep the tribe together, that will keep these programs going, because only the interest on the money will be used.

The criticisms, what there were, from the BIA, I think have really not been beneficial to the entire progress of this tribe's goals.

The CHAIRMAN. Congressman, in your view, does the recent District Court decision in *Buschmann* v. *Cow Creek Band of Umpqua Tribe of Indians* have any bearing on the committee's consideration of this bill?

Mr. WEAVER. Mr. Chairman, it does not. There are five points in that court decision, four of which were won by the tribe or people who were the defendants, and the only one that was won by the plaintiffs was that the 1981 bylaws were not appropriate, I believe.

Mr. WHITTLESEY. Right.

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Mr. WEAVER. The tribe can operate without this and are busy writing the constitution now which will be their governing document. Could I have Mr. Whittlesey explain that point a little further? He was the attorney in this court proceeding.

The CHAIRMAN. Sure.

Mr. WHITTLESEY. And although I am a lawyer, Mr. Chairman, I can be brief. The role at issue was adopted in 1980 and the court very specifically found appropriately and lawfully so by the tribal corporation which, of course, was the body through which the tribe did business prior to its formal Federal recognition on December 29, 1982.

The so-called 1981 bylaws adopted in August 1981, or purportedly adopted in August 1981, the court determined that adoption had not been pursuant to the corporate procedures then in effect for that tribal corporation.

However, the bylaw adoption followed the adoption of the roll by more than 1 year. Our position is that the question of the corporate bylaw adoption in 1981 does not affect the roll question from 1980, since that seems to be the question most on Interior's mind. The tribe is adopting a constitution, but at this point they are very near a final proposal. But the 1981 roll is absolutely immaterial and that is the only point the tribe——

Mr. WEAVER. The 1981 bylaw.

Mr. WHITTLESEY. The 1981 bylaw. And that's the only point that we lost in that litigation.

The CHAIRMAN. Thank you very much, Dennis.

Senator Gorton.

Senator GORTON. No questions.

The CHAIRMAN. Congressman Weaver, very good to have you here.

Mr. WEAVER. Mr. Chairman, thank you very much.

The CHAIRMAN. We'll next hear from our colleague, the senior senator from New Mexico, Senator Domenici, who was detained by a conflict earlier. It's good to have you here, Senator, and we appreciate your testimony as always.

STATEMENT OF HON. PETE DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Thank you very much, Mr. Chairman. Let me be honest about my conflict today. It was that my car broke down. I has to take Metro, and it was slow today. That's why I wasn't here 10 minutes ago.

I want to first thank you for——

The CHAIRMAN. You know, Mr. Chairman, as chairman of the Transportation Committee, let me assure you that the transportation system of this Nation treats Senators just like everybody else.

Senator DOMENICI. It was great. It was wonderful.

The CHAIRMAN. And you wouldn't want any special treatment.

Senator DOMENICI. Absolutely. I ride it frequently.

Senator GORTON. That's why he's moving to Capitol Hill.

Senator DOMENICI. That's why I'm moving down here. In any event, there's nothing wrong with Metro, just my car.

Let me say first that I want to thank you, Mr. Chairman and Senator Gorton for taking time to be here today. Obviously these are very pressurized times here in the Senate and we have many things to do. Those of us who have a particular problem that we're trying to solve with our Indian people appreciate the time you're taking.

I understand Senator Bingaman appeared and testified on behalf of Santa Ana Pueblo. You will hear from Lieutenant Governor Lujan and his legal counsel shortly. Let me merely say that the matters that are contained in the bill which was introduced by myself and Senator Bingaman, which was also introduced in the House, was approved by the entire New Mexico delegation, Republican and Democrat alike.

It's obvious that that part of the bill is, in our opinion, equitable and fair and attempts to correct some boundary disputes. The Santa Ana Pueblo people have been extremely forthright in their efforts to clear up their title and title to the gravel. At the same time they've been considerate of the public rights that are non-Indian that center around the Coronado Monument there about 18 miles from Albuquerque, NM. We want to thank them for that.

Mr. Chairman, three new issues have arisen. They're not monumental issues. They have to do with whether the lease rights ought to be 99 years instead of 50 as they attempt to develop some private sector uses, placing the land received to settle the Coronado Monument dispute in trust, and correcting the erroneous placement of 18 acres in trust for Santa Ana Pueblo that should belong to their fellow Indian people, the Zia's.

We haven't had an opportunity as a delegation to pass on these changes. Since we have worked on this bill in concert, let me simply say that we will do that quickly and report back the collective judgment of the New Mexico delegation. I can say, however, that from what I read and hear, I believe we will come down on the side of concurrence with the Santa Ana Pueblo on those three issues.

The CHAIRMAN. Thank you very much, Senator. You and the rest of the congressional delegation will review the testimony of all concerned and share with us, as we keep this record open, your views, your candid views on these suggested amendments from the basic bill.

Senator DOMENICI. We will, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator. Senator Gorton.

Senator GORTON. No questions.

The CHAIRMAN. Thank you very much, we appreciate you coming, Senator.

We'll go back to the S. 2504 and panel two. We'd like to hear from Ron Esquerra, who is the deputy to the Assistant Secretary for Indian Affairs, the U.S. Department of Interior. He is accompanied by Kristine Marcy.

Good to have you here. Let me assure you that we have your total testimony and we'll consider it as though given in every word. You can summarize it in any way you wish.

STATEMENT OF RONALD L. ESQUERRA, DEPUTY TO THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY KRISTINE MARCY, ACTING DEPUTY TO ASSISTANT SECRETARY MICHAEL COX, ATTORNEY/ADVISOR, DIVISION OF INDIAN AFFAIRS, SOLICITORS OFFICE

Mr. ESQUERRA. Thank you, Mr. Chairman. Let me introduce my solicitor, Mr. Cox, who is also accompanying me. I'm pleased to be here today to present the views of the Department of the Interior on S. 2504. I will summarize the written testimony that we have already submitted for the record.

We support the enactment of the bill if it is amended on three counts. No. 1, we recommend that section 1 of the bill be deleted. This section provides that all interests of the United States in the mineral estate of approximately 494 acres of land in Sandoval County, NM, be placed in trust by the United States for the Pueblo of Santa Ana. The section also provided a waiver of any claims the United States may have against the Pueblo for unauthorized mining activities on these lands.

It is the Department's view that there should be adherence to the policy under the Federal Land Management and Policy Act which calls for the payment of fair market value for public lands and their resources. We make this recommendation in part because we have not had sufficient time to determine if there are justifiable factors to warrant an exception to this policy.

No. 2, in section 2 of the bill we recommend the deletion of an extraneous comma in certain legal land description language.

No. 3, in section 4 we recommend the deletion of language beginning on page 8, line 24, and extending through the end of the bill which apply unique exceptions to generally applicable laws for the distribution of receipts from the property being conveyed to the tribal members. We know of no justification to exclude this Pueblo from the same laws that would apply to all Indian tribes and their members.

Although we support the bill with the aforementioned amendments, we also suggest that the bill be further amended to address an additional issue. We recommend that a new section be added to section 3 to ensure that the lands being conveyed by the University of New Mexico to the Pueblo become a part of the existing Santa Ana Pueblo Reservation. The subject lands that are to be conveyed are currently not within the boundaries of the reservation, but are adjacent to an existing boundary.

Although the Secretary of the Interior has the authority to declare these lands as having reservation status, Congress also has that authority. Since Congress must authorize the conveyance by the University of New Mexico, we would recommend that the lands also be made a part of the reservation in this same process.

Finally, we are aware that the Pueblo has requested that a new section 5 be added to the bill to amend the provisions of 25 USC 415 to provide 99-year leasing authority for certain reservation lands. While we do not object to this request, we view it with great concern.

We feel that the existing provisions which provide for 25 year leases, with an option for an additonal 25 years, is adequate for most tribal leasing activities. We are also uncomfortable with the unpredictabilities of trying to determine or project present and future fair values beyond the 50-year period.

This concludes my oral statement. We will be pleased to respond to any questions.

[Prepared statement of Mr. Esquerra appears in the appendix.]

The CHAIRMAN. Thank you very much. It's my understanding that at the time the Santa Ana Pueblo acquired the land with the gravel pit, there was a conflict in the law as to whether gravel was a mineral within the meaning of Federal law.

Can you comment on that?

Mr. ESQUERRA. That's correct. There was litigation ongoing which was subsequently decided in 1983 in the case of *Watt* v. *Western Nuclear* by the Supreme Court; the issue being whether sand and gravel was a mineral estate of the United States. The Supreme Court found that sand and gravel was included in the mineral estate of the United States.

The CHAIRMAN. It is also my understanding that this land was acquired by the tribe through a loan from the Bureau of Indian Affairs, and a part of this loan package, or a separate loan, was for purposes of assisting the tribe in setting up a gravel pit operation.

Is that also correct?

Mr. ESQUERRA. That's correct. There was a loan of $2 million which was granted to the tribe for the acquisition of the land. That was subsequently increased to $2.5 million. $300,000 of that went for equipment which was for use in the sand and gravel operation, $200,000 was to cover accrued interest that had occurred since the loan was processed.

The CHAIRMAN. Now, as I understand BIA loans under the Indian Finance Act, they require a showing of the potential viability of the business activity to be undertaken.

What, if anything, do the Loan records for this gravel pit operation show with regard to the ownership of the gravel? Do they show that the United States claimed title to the gravel?

Mr. ESQUERRA. They do show that the United States claimed title to the mineral rights, and that was acknowledged by all the parties involved.

The CHAIRMAN. Well, how does this effect the viability to the enterprise and the ability of the tribe to repay the loan?

Mr. ESQUERRA. We have not had an opportunity to review the operating or financial records of the enterprise. Obviously by not having to pay the royalty, which is attached to the sand and gravel, that's a savings to the enterprise, but we do not know whether that savings is the pivotal factor in the viability of the enterprise.

The CHAIRMAN. But has the Bureau of Land Management ever developed any plans to lease or sell the gravel?

Mr. ESQUERRA. To our knowledge, no.

The CHAIRMAN. In your statement you recommend an amendment to section 4 regarding treatment of income that may be distributed to tribal members that may be derived from these lands.

What is the current law governing treatment of income derived from a tribal trust resource that's distributed to tribal members?

Mr. ESQUERRA. On the question of law, I'll defer to my solicitor, Mr. Chairman.

The CHAIRMAN. That's, I'm sure, why you brought him along.

Mr. COX. Senator, to the extent that tribal income to be distributed per capita is derived from trust land, that income would not be subject to Federal or State income taxes. This is provided in 25 USC 117 (a) and (b). An issue would arise, however, if the income that's generated is not derived from some trust resource. If it's simply business income, it may very well not be tax exempt because the key language is the funds have to be held in trust by the Secretary, and certain income earned by the tribes would not necessarily be held in trust by the Secretary.

But certainly in the sand and gravel—if it was a sand and gravel operation, I think we would treat those funds as trust income so if they were distributed per capita, they would not be subject to Federal or State income tax.

The CHAIRMAN. Thank you very much. Our next witness is the Honorable Ernest Lujan, the Lieutenant Governor of Santa Ana Pueblo, Bernalillo, NM. Ernest, good to have you here. Let me assure you that your testimony will be accepted as though every word was read, and you can summarize it any way you wish.

STATEMENT OF HON. ERNEST LUJAN, LIEUTENANT GOVERNOR, SANTA ANA PUEBLO, BERNALILLO, NM, ACCOMPANIED BY THOMAS LUEBBEN, ESQ., LUEBBEN, HUGHES & TOMITA, ALBUQUERQUE, NM

Mr. LUJAN. Thank you, Mr. Chairman and members of the committee. I would first like to thank you for giving me this opportunity to make this presentation here today. My name is Ernest Lujan. I am the Lieutenant Governor for Santa Ana Pueblo. Here with me also is Mr. Tom Luebben, our legal council.

The proposed legislation, S. 2504, to authorize certain transfers of the land, is essential to clarify land title problems. Included in the following are, No. 1, to confirm mineral titles of one section of land to the Pueblos to facilitate development of its sand and gravel operation; No. 2, is to correct errors in Public Law 95-498, to confirm title to certain of Santa Ana Pueblo's aboriginal lands; and, No. 3, ot authorize the settlement by an exchange of lands of trespass damage claimed by the United States to the University of New Mexico and the State of New Mexico, as it was codified.

This had to do with Coronado Monument and its facilities they had built for visitors which was on the Santa Ana tribal lands. And in negotiations, the settlement was that they would keep their facilities and, in return, the Tribe would acquire 120 acres adjacent to the Coronado Monument.

In addition, we are also asking the committee to resolve three additional problems which are not in the bill itself, and that they be added to the bill in committee. One is to extend the Pueblo Reservation boundary to include the settlement from the University of New Mexico to pick up the 120 acres. This falls under section 3.

Another is to transfer a small parcel of land to the Pueblo of Zia which was erroneously conveyed by the United States to the Pueblo of Santa Ana. At our tribal council meeting, our council authorized transfer of the land by a council resolution. However, we don't have the resolution here with us today. If the committee would like, we can make that possible.

Also, C, we would like to extend a 99-year leasing authority to certain of the Pueblo's land. On the corrections and additions of this problem we have presented here today to the committee, appropriate languge has been provided for your committee staff.

In conclusion, I would like to thank the committee very much for giving me this opportunity and consideration to our problems. If there are any questions, my legal counsel and I will answer any questions.

[Prepared statement of Mr. Lujan appears in the appendix.]

The CHAIRMAN. Thank you very much, Governor. What is the annual income currently generated to the Pueblo from the operation of the gravel pit we've been talking about?

Mr. LUJAN. The operation has shut down, so as of now I don't have any figures.

The CHAIRMAN. So you don't have any people employed there either.

Mr. LUJAN. No.

The CHAIRMAN. How many people would be employed there if it was operating?

Mr. LUJAN. When it was operating, it had a total of at least six people employed.

The CHAIRMAN. What percent of them were Indians?

Mr. LUJAN. It was about 86 percent.

The CHAIRMAN. What is your charge per ton for this gravel?

Mr. LUJAN. Currently we're under a management contract and we have a 50-cents charge on the first 200,000 cubic yards of gravel mined, and thereafter it will be 40 cents.

The CHAIRMAN. What would the Bureau of Land Management charge you if the United States retains ownership?

Mr. LUJAN. They're asking for 45 cents a cubic yard.

The CHAIRMAN. In other words, they'd take all of it and you'd operate it for free. Well, that's one of the first good deals the Government gets. I mean, you'd think they'd treat foreign countries the way they treat our native Americans.

If the Pueblo doesn't acquire ownership of this gravel, will the tribe be to able to continue operation of the pit? Will it be able to repay the loan?

Mr. Lujan. No; it would not.

The CHAIRMAN. Now, a question has arisen with regard to liability of the United States regarding the proposed transfer of Santa Ana land to the Zia Pueblo, as you are proposing.

In view of your support for this amendment, would the Pueblo be willing to execute any documents necessary to accomplish this transfer, including a release of liability to the United States.

Mr. LUJAN. The tribe foresees no problem there, so it should be OK.

The CHAIRMAN. Thank you very much, Governor. Good to have you here.

Mr. LUJAN. Thank you.

The CHAIRMAN. We'll go back to the completion of the testimony on H.R. 3214 and ask for Hazel Elbert, who is the Deputy to the Assistant Secretary for Indian Affairs, to give the administration's position on this.

STATEMENT OF HAZEL ELBERT, DEPUTY TO THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY LATHEL DUFFIELD, HISTORIAN, FEDERAL ACKNOWLEDGMENT PROGRAM

Ms. ELBERT. Thank you, Mr. Chairman. I have with me here today Lathel Duffield, who is a historian with our Federal Acknowledgment Program.

Mr. Chairman, I am pleased to present the views of the Department of the Interior on H.R. 3214. I'd like to summarize my statement and submit my prepared statement for the record.

The judgment funds involved here were appropriated on August 21, 1984, and a results of research report was prepared by the Bureau of Indian Affairs to determine the beneficiaries of the funds. This research, using various archival and published sources, also examined relevant documents and testimony that had been accumulated during the Claims Court proceedings.

On the basis of the results of research, a Secretarial proposal was formulated, taking into consideration the relevant provisions in Public Law 96-251, the Cow Creek Claims Act of May 1980, and Public Law 97-391, the Cow Creek Recognition Act of December 1982. Under those acts, it is clear that only the descendants of the 1853 Cow Creek Band were to be beneficiaries of the award.

The Secretarial proposal recommends a per capita distribution in which the tribe's share would be proportionate to the number of its members who are able to document 1853 Cow Creek Band ancestry. The tribal plan which is in H.R. 3214 ignores existing law by programming all of the funds for the exclusive use of the tribe.

Section 5 of Public Law 97-391 closed the Cow Creek rolls and many were excluded who were eligible to be members. H.R. 3214 does not allow benefits for Cow Creek descendants who are barred from membership in the tribe. We believe that this inconsistency may create problems regarding the legality of who is eligible to receive money from the judgment award.

As the committee knows, the Cow Creek Band of Umpqua Tribe of Indians has objected strongly to sharing this award with any who are not members of that band. While we commend the tribe on its willingness to program all of these funds, we oppose H.R. 3214 because it ignores two previous acts of Congress, it excludes or limits benefits to some who should be beneficiaries, it disregards Secretarial review and approval, and it locks funds into specific categories that would take additional legislation to change.

In general, we support the concept of judgment funds being used for tribal programs. However, in this instance that approach is not fair since it provides compensation for individuals who are not descendants of the Cow Creek Band of 1853 and excludes individuals who are. Previous legislation was passed to remedy a wrong, but if H.R. 3214 is enacted, that wrong will not have been remedied.

Mr. Chairman, we note that under *Delaware Tribal Business Committee* v. *Weeks* it's clear that the judgment funds at issue in this bill are tribal property in which individuals, as much, do not have an interest. The manner in which Congress decides to program a judgment award will generally not be disturbed by the courts, provided that the legislative judgment can be tied rationally to the fulfillment of the unique Federal obligation to Indians.

Although it may be that the *Weeks* decision indicates that the Congress may distribute these funds to the present day tribe, despite the fairness issue, we recommend that the bill be amended either to simply authorize the Secretary to prepare a roll of Cow Creek descendants and distribute these funds per capita, or as proposed in the Secretarial plan, which I mentioned before, authorize a per capita distribution with the shares of the members of the tribe to be paid to the tribe for programming purposes. We believe that given the history of this group, these are the only equitable distribution plans for this award.

This concludes my statement. I'll be happy to answer any questions you may have.

Thank you.

[Prepared statement of Ms. Elbert appears in the appendix.]

The CHAIRMAN. Thank you very much. In the Congressional Budget Office letter to Congressman Udall on H.R. 3214, the CBO addresses the Cow Creek Band's obligation to repay a $315,000 loan to the Bureau of Indian Affairs. The CBO letter states, "BIA expects that, without the funds provided by this bill, the Band would be unable to meet the payments and would default on the loan."

If the committee were to adopt Interior's proposal authorizing a per capital distribution of the judgment fund, how does the Department propose to secure repayment of the BIA loan?

Ms. ELBERT. Mr. Chairman, in those cases where a loan is defaulted, we liquidate the loan and get as much from the liquidation to repay the loan as we possibly can. The present situation of the Cow Creek loan at the moment is they are delinquent, and we have notified them as of Friday that they have 90 days to give us a plan for correcting their delinquency status.

We are requesting financial statements and that kind of documentation. Once we review it, we can probably renegotiate the loan to come up with a different repayment plan.

The CHAIRMAN. In June 1984, the United States entered into a settlement of the tribe's claim and, by that act, recognized the Cow Creek Band as the legal entity representing those persons entitled to share in the award.

What new information has been brought to the Department since 1984 that now causes you to take the position that the members of the Cow Creek Band are not the lineal descendants of the 1853 Band members, and thus are not entitled to share in the award?

Ms. ELBERT. Based on the information that we gathered during our results of research, that information led us to believe that a great number of the members of the Band at the moment are not Cow Creek descendants.

The CHAIRMAN. In your view, does the recent District Court decision in *Buschmann* v. *Cow Creek Band of Umpqua Tribe of Indians* have any bearing on the merits of this legislation?

Ms. ELBERT. Mr. Chairman, we believe that it does. We would be happy to work with the committee to address the issues which we think this decision presents to us.

The CHAIRMAN. Let me ask another question. You're taking a position supporting per capita distribution on the bill. Now, you supported limiting the use of judgment funds to tribes on the Sisseton-Wahpeton judgment bill.

Why this difference in policy?

Ms. ELBERT. The legislation permitting the tribe to file their claim in court, Mr. Chairman, more or less determined who would be the beneficiaries and it said individuals of Cow Creek ancestry who were there during the signing of the 1853 treaty. We feel as though that, more or less, dictates who the beneficiaries are of this judgment award.

Based on the information we have from our results of research, we do not feel that the members of the present Band, or the majority of the members of the present Band, are of Cow Creek descendancy.

The CHAIRMAN. Apparently, then, you concluded in the Sisseton-Wahpeton bill the records in the courts supports tribal use.

Ms. ELBERT. I'm sorry, what was that again?

The CHAIRMAN. Apparently you then decided that in the Sisseton-Wahpeton case the records in the court support tribal use as opposed to per capita distribution.

Ms. ELBERT. Mr. Chairman, in the case of the Sisseton-Wahpeton bill, the people involved there are still the successors, whereby this situation is different from that. We don't feel that the people involved here are descendants or the successor to the 1853 tribe.

The CHAIRMAN. OK, thank you very much. We'll next hear from a panel; Naomi Rainville Gould, Ronald Buschmann, Amaryllis Freeman Young, Janey La Chance Heussner, and Rose Deardorff. As I understand it, these are opponents of the bill, and we understand that you have come prepared testimony. Let me assure you that your prepared testimony will be in the record as though you had given it in its totality.

We're glad to have you here. Who wants to lead off?

Ms. GOULD. I guess I will.

STATEMENT OF NAOMI RAINVILLE GOULD, EUGENE, OR

Ms. GOULD. Mr. Chairman, I'm very grateful to be here today and to have the opportunity to speak on behalf of H.R. 3214 and amendments. My name is Naomi Rainville Gould. My address is 2050 West 29th Avenue, Eugene, OR.

I am currently an enrolled member of the Cow Creek Band of Umpqua Tribe of Indians. I'm a member of the Rainville family and a descendant of Adelaide Petit Rainville. I am related to all of the original families, namely: Rainville Rondeau Rondeau/Young Dumont LaChance and Parazoo. These families lived together, intermarried and occupied the treaty land prior to 1853.

I have worked 12 years with other tribes of western Oregon as well as working for the Cow Creeks. I've served on the board of directors, I've served as treasurer, enrollment secretary, and, also, worked on the Cow Creek enrollment project under the supervision

of Dr. Stephen Dow Beckham. I have come here four different times to testify for the Cow Creeks. I have paid my own way, my own expenses personally for three trips. And I am here today to voice my opinion on the bill and the amendments.

My testimony is in two parts, and first I'd like to talk about the disbursement plan and, second, I will comment on the proposed amendments.

I feel the elderly assistance program discriminates because I have no children, I have no grandchildren. But if I did, I would feel that I, because I am an elder, would not be entitled, really and honestly, to take a $5,000 one-time payment if the people under the age of 50 could not. And this is bad on the ones in the, say, 25, 35 age bracket.

There have been many comments regarding the tribal vote that was taken on the distribution plan on May 19, 1985. This vote was 78 to 16 in favor of the plan. It was inviting to the elders because they had been baited with a one-time $5,000 payment.

An elder in our family said no, he didn't favor it. But after being turned down for various other programs, he felt that was probably the only thing he would ever receive from the tribe.

Sue Shaffer, chairperson of the Cow Creeks, stated in her testimony here on December 10, 1985 before the House Committee on Interior and Insular Affairs that this vote was by secret ballot. This is not true. The membership list was numbered, as were the ballots. It was simple to match numbered ballots with the membership list and immediately the 16 members opposing the plan were identified.

With regard to higher education and vocational programs, I feel that this is way too much to spend because of the age limit of the people. Good grants and funding from other sources could be used for this type of a program and free that money for something else.

I oppose the economic development and tribal center part. The tribe has been functioning for over 3 years now. They have spent thousands of dollars on economic development and what do we have to show for it? Nothing. The Evergreen Motel is a white elephant, it will never pay its own way due to the economy, the unemployment in the area and it sits back too far from freeways to have any tourist business of overnight occupancy.

There are so many people that are travelling and I notice it on the coast, people coming south going to the expo. They use our rest areas. They are—and they're not going to go out of their way to stay at a rundown, dilapidated motel. What we really need is good productive business ventures, business ventures that would aid the unemployment, give a lot of our people work, and help the economy.

I don't believe in a lot of money for miscellaneous activities of the board. I feel it's good cover up for the board to continue with their high cost of administration and still have funds available for past and future outside professional services.

In summing up my opposition, I must say, this plan discriminates with regard to membership. It is unfair, it does not provide for equality to all members. It was far from the original intent of Public Law 96-251. I will admit that the plan has some merit—very little. I think perhaps under good guidance, like the BIA, or

some other good administrative group that some phases of the plan might work.

These reasons are why I favor an equal per capita payment for all qualified members. The BIA should determine eligibility, not a small group of people. Some of them aren't qualified because they are not descendants of ancestors who inhabited the land prior to the treaty of 1853.

Now I'd like to talk about the second part of my testimony and that's on the amendments. Amendment No. 1, page 2, (4) states, "The term 'tribe's governing body' shall mean the governing body as determined by the tribe's governing documents."

At the December 10 hearing, Congressman Jim Weaver and I had a little discussion because I told him that that would have to be changed to coincide with Public Law 96-251, which says that tribal council, the entire council, will be the governing body. He assured me that that would be done. But the amendment came out that they would go according to the tribe's governing documents.

At this time, the tribe has no constitution. It has been kicked back twice in the rough draft form, and the reason has been the same concern of the tribal governing body. Upon approval by the BIA of a constitution, it will be mailed to the voting membership for their approval. At the present time there is no constitution.

The Honorable Michael R. Hogan, U.S. District Court, Eugene, OR, issued an opinion dated July 28, 1986 on civil case number 85-6137-E, known as Robert L. Buschmann and plaintiffs against the Cow Creek Band of Umpqua Tribe of Indians and defendants. The opinion set aside the 1981 bylaws. Therefore, the requirements for membership, as defined in the 1978 bylaws, would be the determining factors for the membership eligibility.

Amendment 2, here again the tribe's governing documents are in question. This amendment is not in line with Public Law 96-251. Interrogatory 14 does not follow the same guidelines.

Amendment 3 is quite misleading. The term "nontribal member" should be "unenrolled" tribal member. This amendment, as written, creates a second class citizenship.

Public Law 96-251 was written and passed with the intent to give all members equal rights and a voice in tribal affairs. Somewhere along the line we left the beaten path. I know there are a lot of pros and cons regarding membership. There are 351 persons known as the Cow Creek Descendants Organization, there are 51 members of the Marshall Family, 40 members of the Dompier Family, and perhaps 25 to 50 members from other families who claim to be Cow Creek descendants. If these people can prove their ancestry and are qualified, it is my belief that they should be enrolled members.

In conclusion, I believe, again, in a per capita distribution. I believe in fairness and equality for all members. I do not believe the affairs of the tribe should be entrusted to a few on a board of directors. The entire tribal council should have a voice in all operations of the tribe.

My mother, Lucile B. Rainville, passed away March 8. She had been associated with the Cow Creeks since 1910. She believed in, and she worked for, fairness, honesty and equality for all descend-

ants of the persons who were in the Cow Creek territory prior to the treaty of 1853.

She always maintained that through cooperation and working together for the good of the entire tribe, the tribe would prosper and be rewarded for the long struggle for recognition. I hope that someday, in the near future, her vision will become a reality.

Thank you for allowing me to testify here today. May God bless you and guide you.

[Prepared statement of Ms. Gould appears in the appendix.]

The CHAIRMAN. Thank you very much. Who is next, or do you all support that testimony.

Mr. BUSCHMANN. I support it.

Ms. YOUNG. I do also.

Ms. HEUSSNER. I support her testimony.

Ms. DEARDORFF. I support every bit of it.

The CHAIRMAN. Thank you very much. We appreciate you coming to participate in the hearings. Do you have some additional testimony?

Ms. YOUNG. Yes, I do. This is mine because I'd like to read some of it because I'm asking that Mr. Weaver—or these amendments be stricken from H.R.——

The CHAIRMAN. Well, all of your prepared statements have been made a part of the record. If you want to summarize yours, go ahead.

STATEMENT OF AMARYLLIS FREEMAN YOUNG, MYRTLE CREEK, OR

Ms. YOUNG. My name is Amaryllis Freeman Young. I descend from the Dumont family. This is the fourth time I've been to Washington, DC. I would like to state that only once, in 1981, was my trip paid for by a grant. In 1979, 1985, and this trip my family and I have paid for it out of our own resources.

Recently, May 29, I had major surgery for cancer, but I felt this was real important and my doctor released me to come to offer my testimony. I want fairness, equality, and justice for all my people.

I feel interrogatory 14, mentioned in H.R. 3214, should be stricken from the bill. None of the enrolled members, including myself, has seen this roll. None know if they are on it or not. Worse yet, it is a closed roll and there are blood descendants left off.

This bill would undo what our litigation law, Public Law 96-251, gave to us. I feel Public Law 96-251 should be followed. It protects all enrolled members, plus those who have been denied enrollment. And, it wouldn't allow the wrong people to be paid because the enrollment requirements include proving one's lineage prior to the 1853 treaty. Public Law 96-251 should be the basis of any amendments made to H.R. 3214.

The amendment to compensate deserving nonenrolled members is not good. They have the birthright by descendancy to be enrolled members. Monetary compensation means nothing if they are to be continued to be denied enrollment. Enrollment, to belong, to be a part of a tribe is very important to all Indian people. Therefore, this amendment is wrong.

The elderly assistance program also discriminates. I am eligible for this proposed one-time payment, yet I do not feel I am more deserving than anyone else. I feel the money should be left in one lump sum, and left there forever to draw interest. And, as a certain age is reached, beginning from the eldest down, everyone should receive money.

Public Law 96-251 rules out dictatorship, where we won't be governed by 11 people. It explains the tribe's governing body. I ask that section 4 (a) and (b) be the amendments for H.R. 3214. And I won't read this because I know you—I have the amendment here.

So, I just ask, if the tribe so wants, if they want to leave that lump sum, if it is done equally, fairly—in Public Law 96-251 it states here the council is our governing body. I believe in a lump sum or however it is decided.

[Prepared statement of Ms. Young appears in the appendix.]

The CHAIRMAN. Thank you very much. Do others have additional comments?

Mr. BUSCHMANN. Yes, sir; Honorable Chairman, my name is Ronald Buschmann and I reside in North Highlands, CA. I am a direct lineal descendant to the Cow Creek Indians.

Along with my written testimony I'd like to be able to submit a petition of people who oppose H.R. 3214.

The CHAIRMAN. Without objection, the committee will accept the petition. We appreciate you bringing it along.

Mr. BUSCHMANN. Thank you.

The CHAIRMAN. Does anyone else have additional comments?

Ms. YOUNG. Sir, I do have some extra copies of the——

The CHAIRMAN. The staff will get all of that. We appreciate very much your coming and we'll make all of your testimony and remarks and writings a part of the record. Thank you very much for sharing your views with us.

Ms. GOULD. Thank you.

The CHAIRMAN. We also want to allow Dennis Whittlesey, a tribal attorney, to also introduce his statement before the record closes.

The committee will stand in recess subject to call of the Chair.

[Whereupon, the committee adjourned at 11:03 a.m. subject to call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

PREPARED STATEMENT OF SENATOR JEFF BINGAMAN

MR. CHAIRMAN. I AM PLEASED TO APPEAR BEFORE THIS COMMITTEE TO EXPRESS MY SUPPORT FOR LEGISLATION THAT WOULD CORRECT AND CLARIFY MANY OUTSTANDING LAND ISSUES CONCERNING THE SANTA ANA PUEBLO.

SENATOR DOMENICI AND I ARE COSPONSORS OF THIS BILL AND A SIMILAR VERSION WAS INTRODUCED BY THE HOUSE MEMBERS OF THE NEW MEXICO DELEGATION. I APPRECIATE THE PROMPT RESPONSE FROM THE COMMITTEE IN HOLDING THESE HEARINGS AND I AM HOPEFUL OF ACTION ON THIS BILL BEFORE WE ADJOURN.

I HAVE BEEN WORKING WITH THE PUEBLO SINCE THE LAST CONGRESS TO REACH A WORKABLE AND FAIR COMPROMISE. I BELIEVE THE BILL BEFORE US TODAY WILL ACCOMPLISH THE ENDS OF ALL PARTIES CONCERNED.

THE LEGISLATION HAS FOUR MAJOR COMPONENTS THAT I WISH TO HIGHLIGHT. THE FIRST SECTION CONVEYS TO THE PUEBLO MINERAL INTERESTS IN A TRACT OF LAND THE PUEBLO PURCHASED FROM PRIVATE LAND OWNERS FOR THE EXPRESS PURPOSE OF A TRIBALLY-OWNED SAND AND GRAVEL OPERATION. AT THE TIME THE PUEBLO PURCHASED THE LAND IN 1981 IT WAS BELIEVED THAT GRAVEL

WAS NOT A MINERAL WITHIN THE TERMS OF THE STOCK-RAISING HOMESTEAD ACT. THE SUPREME COURT HOWEVER, IN 1983 HELD IN WATT V. WESTERN NUCLEAR CORPORATION THAT "COAL AND OTHER MINERALS" INCLUDES GRAVEL. CONSEQUENTLY, THIS DECISION HAS REMOVED PUEBLO TITLE TO THE GRAVEL WHICH HAS UNDERCUT THE VIABILITY OF A TRIBAL SAND AND GRAVEL OPERATION. WITH THIS TRANSFER OF MINERAL TITLE, THE PUEBLO WILL ONCE MORE BE ABLE TO CONTINUE AN ENTERPRISE THAT PROMOTES EMPLOYMENT FOR THE PUEBLO AND ECONOMIC DEVELOPMENT FOR THE ENTIRE STATE. THE CONVEYANCE OF THE MINERAL INTERESTS IS MADE TO THE UNITED STATES TO BE HELD IN TRUST FOR THE PUEBLO. THEREFORE, THE OVERRIDING POLICY CONSIDERATION SHOULD BE PROMOTION OF TRIBAL ECONOMIC SELF-SUFFICIENCY AS OPPOSED TO MAINTAINING THE PRESENT SITUATION.

THE SECOND SECTION OF THIS BILL CORRECTS THE LEGAL DESCRIPTION OF LAND CONVEYED TO THE PUEBLO PURSUANT TO PUBLIC LAW 95-498. SEVERAL ERRORS WERE MADE IN THE DESCRIPTION OF THE LANDS AFFECTED BY THAT ACT. THE SOUTHERN PUEBLO AGENCY OF THE BUREAU OF INDIAN AFFAIRS PREPARED THESE CORRECTIONS AND HAS ATTESTED TO THEIR ACCURACY. NO NEW CHANGE IN CURRENT LAND STATUS IS MADE BY THESE CORRECTIONS.

THE THIRD SECTION OF THIS BILL AUTHORIZES THE EXCHANGE OF LANDS BETWEEN THE SANTA ANA PUEBLO AND THE UNIVERSITY OF NEW MEXICO DUE TO THE TRESPASS OF THE CORONADO MONUMENT.

AM PLEASED THAT THE PARTIES IN LITIGATION OVER THE TRESPASS ISSUE HAVE REACHED AN AGREEMENT AND HAVE DECIDED TO ABIDE BY THIS ACCORD. PURSUANT TO THIS AGREEMENT, THE PUEBLO IS CHARGED WITH THE RESPONSIBILITY OF SEEKING CONGRESSIONAL APPROVAL. THE EXECUTED AGREEMENT, SIGNED BY ALL THE INTERESTED PARTIES: THE NEW MEXICO GOVERNOR'S OFFICE, THE NATURAL RESOURCES DEPARTMENT OF NEW MEXICO, THE U.S. ATTORNEY'S OFFICE, THE BUREAU OF INDIAN AFFAIRS, THE PUEBLO OF SANTA ANA, THE UNIVERSITY OF NEW MEXICO, AND THE MUSEUM OF NEW MEXICO, CONTAINS A DEADLINE OF DECEMBER 31, 1986 FOR PASSAGE OF A LAND EXCHANGE BILL. THE AGREEMENT PROVIDES THAT THE PUEBLO WILL RELINQUISH TO THE UNIVERSITY 26.57 ACRES ALONG THE EAST SIDE OF CORONADO PARK AND MONUMENT IN EXCHANGE FOR 120 ACRES JUST WEST OF THE PARK AND MONUMENT, AND THAT TWO FOUR-YEAR TUITION SCHOLARSHIPS EACH YEAR FOR A TOTAL OF FIVE YEARS, WILL BE AWARDED TO QUALIFIED SANTA ANA STUDENTS. THE AGREEMENT STATES IN PERTINENT PART THE FOLLOWING:

"EACH OF THE PARTIES TO THIS AGREEMENT ACKNOWLEDGES THAT THE CONVEYANCES REQUIRED BY THIS AGREEMENT CAN ONLY BE COMPLETED IF APPROVED BY THE CONGRESS OF THE UNITED STATES AND OTHER STATE AND FEDERAL AGENCIES. THE UNIVERSITY REQUIRES CONGRESSIONAL APPROVAL BECAUSE ITS PATENT RESTRICTS THE UNIVERSITY'S POWER TO ALIENATE THE PROPERTY AND RESTRICTS THE USE OF THE PROPERTY TO ARCHEOLOGICAL PURPOSES. THE

UNITED STATES AND THE PUEBLO REQUIRE CONGRESSIONAL APPROVAL BECAUSE THE INDIAN NON-INTERCOURSE ACT (25 USC SECTION 177) AND OTHER CONGRESSIONAL ACTS RESTRICT THE POWER OF THE PUEBLO TO ALIENATE ANY OF ITS REAL PROPERTY."

AS A RESULT IT IS APPROPRIATE FOR THE CONGRESS TO ACT IN ORDER TO MEET THIS DEADLINE TO CARRY OUT THE TERMS OF THE NEGOTIATED SETTLEMENT.

AND FINALLY, THE FOURTH SECTION OF THE BILL ASSURES THAT ALL PRE-EXISTING LEGAL RIGHTS ARE PROTECTED AND ANY MINERAL LEASES, INCLUDING CURRENT OIL AND GAS LEASES, ARE CONTINUED IN FULL EFFECT. HOWEVER, ANY PENDING APPLICATIONS FOR LEASES, AT THE TIME OF ENACTMENT, WILL NOT BE VALID BECAUSE THEY HAVE NOT YET BEEN ISSUED OR APPROVED.

I UNDERSTAND THAT THE PUEBLO WILL BE URGING THE COMMITTEE TO CONSIDER OTHER SUBSTANTIVE ADDITIONS TO THE BILL. I ASK THAT I BE ALLOWED TO SUPPLEMENT MY REMARKS AND RESPOND IF NECESSARY TO THESE COMMENTS. I WILL CERTAINLY BE INTERESTED IN HEARING THE PUEBLO'S EXPLANATION AND JUSTIFICATION OF THEIR PROPOSALS AND ANY OTHER WITNESS RESPONSE TO THEM.

MR. CHAIRMAN, I BELIEVE THAT THIS LEGISLATION WILL FINALLY BRING US CLOSER TO A RECONCILIATION OF MANY

OUTSTANDING MATTERS CONCERNING THE USE OF THE SANTA ANA PUEBLO'S LAND AND RESOURCES. TODAYS HEARING WILL ALLOW ALL THOSE INTERESTED IN THIS ISSUE AN OPPORTUNITY TO EXPRESS THEIR VIEWS. I UNDERSTAND THAT TOMORROW THE HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE WILL HOLD A SIMILAR HEARING ON THE COMPANION BILL, H.R. 4873. I FAVOR THIS COORDINATED APPROACH AND OFFER THIS COMMITTEE MY SUPPORT AND ASSISTANCE.

THANK YOU, MR. CHAIRMAN.

PREPARED STATEMENT OF CONGRESSMAN JIM WEAVER

Mr. Chairman, in 1980 Congress enacted Public Law 96-251 enabling the Cow Creek Band of Umpqua Indians, a tribe whose ancestral homelands are in my Congressional District in southwestern Oregon, to pursue a "taking" claim in the U.S. Claims Court. Pursuant to a settlement agreement between the parties, the Court granted an award of $1,500,000 to the Tribe on June 12, 1984. Funds to satisfy the award were appropriated by the Congress on August 21, 1984.

In the interim, federal recognition was restored to the Cow Creeks through the enactment of Public Law 97-391 on December 29, 1982. The Tribe subsequently developed a judgment fund distribution plan providing that the entire judgment fund, less costs of pursuing the claim, would be set aside as the principal from which specified tribal programs would be funded. The interest earned on this principal would be committed to elderly assistance, higher education and vocational training, housing assistance, economic development, and other tribal programs.

I strongly endorse this approach. The "taking" claim is a tribal one and, as a result, the judgment fund should be utilized in a way that benefits the tribe as a whole.

Mr. Chairman, the legacy of per capita distributions is a dismal one. Small one-time payments may provide a minimal short-term benefit to the individuals receiving them, but they do not further the long-term interests either of those persons or of the Tribe. H.R. 3214 avoids that result by establishing a variety of programs that will assist all tribal members and promote tribal self-sufficiency.

Furthermore, this bill will add no costs to state or local governments, and will actually increase receipts to the federal

government by an estimated $20,000 - $30,000 annually beginning in 1989 from interest payments on a BIA loan to the Tribe to purchase property in southwestern Oregon.

The House Interior Committee held a hearing on H.R. 3214 on December 10, 1985. I offered three amendments to the bill at the March 19, 1986 mark-up, to address concerns that had been raised by the Administration and some witnesses at the hearing. I believe those concerns were valid and that our amendments strengthened the bill.

The first amendment redefined the term "tribe's governing body" from "Board of Directors" to "the governing body as determined by the tribe's governing documents." in order to avoid any potential conflict between this legislation and tribal governing documents.

The second amendment defined the membership of the Cow Creek Tribe by specifying the base roll which constitutes the tribe and providing that tribal membership shall subsequently be determined by tribal governing documents. This not only resolves the issue of the roll that was referred to in the 1982 Act, but also avoids a situation where Congress permanently closes the tribal roll.

The third amendment allowed non-tribal members who can meet the descendancy and other requirements of the 1980 jurisdictional act to participate in the education, and housing programs.

Finally, the House of Representatives approved H.R. 3214 on May 6, 1986 by a voice vote.

I thank the Committee once again for the opportunity to testify this morning and urge the prompt passage of this legislation.

PREPARED STATEMENT OF RONALD ESQUERRA

Good morning Mr. Chairman and Members of the Committee. I am pleased to be here to present the views of the Department of the Interior on S. 2504, a bill "To authorize certain transfers affecting the Pueblo of Santa Ana in New Mexico, and for other purposes."

We support the enactment of S. 2504 if it is amended to delete section 1 which we have not had sufficient time to arrive at a position on for reasons I will mention later. S. 2504 is intended to resolve several land related problems affecting the Pueblo of Santa Ana.

Section 1 of S. 2504 provides that all interests of the United States in the mineral estate of some 494 acres of land in Sandoval County, New Mexico shall be held in trust by the United States for the Pueblo of Santa Ana. The only known minerals in this area consist of sand and gravel. This section also provides for a waiver of any claims the United States may have against the Pueblo for unauthorized mining activities on these lands.

In 1981, the Pueblo of Santa Ana began procedures for the purchase of 300.105 acres of land in Sandoval County, New Mexico, from H. E. Leonard. This land was surrounded on three sides by Pueblo reservation lands. It contained extensive sand and gravel deposits and the Pueblo intended to establish a Pueblo-owned and operated sand and gravel enterprise. The purchase was paid

for with tribal funds and a loan from the Bureau of Indian Affairs (BIA). The Pueblo did not purchase the mineral rights which had been reserved to the United States when the United States issued a patent in 1936, to Eva Wade Duke who later sold the land to H.E. Leonard. The patent which was issued under the Stock-Raising Homestead Act of 1916 (43 U.S.C. 299), reserved all the coal and other minerals to the United States. At the time of the purchase, the issue of whether sand and gravel were part of the United States' mineral estate was in litigation. Although it was this Department's position that sand and gravel was part of the mineral estate and the Pueblo was aware of that view when it bought the land without the minerals, the issue was not finally decided until 1983 when the Supreme Court, in Watt v. Western Nuclear Corporation, 462 U.S. 36, held that "minerals" reserved to the United States under the Stock-Raising Homestead Act of 1916 included gravel.

Because the minerals are federally owned, the Pueblo has been required to obtain a sand and gravel permit from the Bureau of Land Management (BLM) and pay for any material mined. The court decision also raised the possibility of a trespass claim against the Pueblo by the BLM.

The property purchased from Mr. Leonard was taken in trust by the United States for the Pueblo, and in April of 1986 was proclaimed part of the Santa Ana Pueblo Reservation. In 1982, the Pueblo purchased 132.088 acres from First American Title Insurance Company and now holds title to it in fee. In 1985, the tribe acquired by real estate contract 10 acres known as the Jarvis Property. Early in 1986, the Pueblo secured an option on 52.173 acres known as the Brooks Property. Once the Pueblo has obtained this property, the Pueblo will own or have interest in all of the surface estate of the 494.366 acres in section 19, T. 13N., R. 4E., N.M.P.M..

The Pueblo is $830,000 behind in payment on a loan from the BIA and we have not had sufficient time to determine the best course of action. It is this Department's view that we should adhere to the policy under the Federal Land Management and Policy Act calling for the payment of fair market value for public lands and their resources. We have not had sufficient time to determine whether there may be factors involved which might justify an exception to that policy in this case. Therefore we recommend that section 1 be deleted from the bill.

Section 2 would amend Public Law 95-498 (92 Stat. 1672), which provided for the transfer of certain lands to the Pueblo of Santa Ana, to correct erroneous legal descriptions contained in the Act. This section of the bill will not increase or decrease the acreage originally intended to be conveyed to the Pueblo in Public Law 95-498. However, S. 2504 has an extra comma inserted after the first Northeast quarter on page 3, line 22 which should be deleted.

Section 3 of S. 2504 would authorize an exchange of lands between the Pueblo of Santa Ana and the University of New Mexico to resolve a trespass issue due to the location of the Coronado State Monument on the El Ranchito Grant which belongs to the Pueblo.

On March 26, 1980, the United States filed suit in the U. S. District Court for New Mexico on behalf of the Pueblo against the University and the State of New Mexico seeking ejectment of the defendants and trespass damages (CIV 80-0193c). The parties have reached a settlement agreement that will settle all matters in dispute. An integral part of the settlement calls for an exchange of lands to take place between the Pueblo and the University of New

Mexico. Under the agreement the United States on behalf of the Pueblo would convey 26.57 acres of partially improved land to the University. In turn the University would convey to the United States in trust for the Pueblo 119.86 acres of unimproved land.

The University requires congressional approval because its patent restricts the University's power to alienate the property and restricts the use of the property to archeological purposes. In addition, the agreement calls for congressional and other governmental approvals to be given by December 31, 1986. If all approvals are not given by then the agreement terminates.

The land to be conveyed to the University is not of any real benefit to the Pueblo as it does not have any commercial value due to its proximity to the bank of the Rio Grande River. The land to be conveyed to the United States in trust is of greater value to the Pueblo because of its potential for development and it is adjacent to land the Pueblo owns in section 19.

Section 3 of the bill also sets out procedures that the Pueblo would follow if it wants to develop the land it receives from the University. These procedures call for consultation with the University and other New Mexico State agencies and for mitigation and protection of archeological resources contained in the Coronado State Monument. It is not expected that these procedures will impact any development the Pueblo may want to undertake.

Section 4 of S. 2504 provides that existing rights of ownership or access are protected and that existing mineral leases are continued in full force and effect. All land or minerals to be held in trust for the Pueblo will be

subject to the same laws and regulations applicable to other lands held in trust. However, section 4 includes language beginning on page 8, line 24 which should be deleted so that the laws generally applicable to the treatment of distributions of tribal income to tribal members will apply to income from the lands involved in S. 2504.

Although we support S. 2504 with the above noted amendments, we suggest that the bill be further amended to address two additional issues.

First, we recommend that a new subsection (d) be added to S. 2504 to declare as part of the Santa Ana Pueblo Reservation the land which will be acquired in trust for the benefit of the Pueblo under the settlement of the Coronado Monument trespass case, as authorized by the bill.

This amendment is necessary because the bill does not address the reservation boundary issues. The lands to be conveyed by the University to the United States are adjacent to the existing reservation boundary. This amendment would ensure that the conveyed lands are part of the existing Santa Ana Pueblo Reservation and that Santa Ana Pueblo would have jurisdiction.

Second, the Santa Ana Pueblo has requested by resolution that a new section 5 be added to S. 2504 to amend the provision in 25 U.S.C. 415 to provide 99-year leasing authority for the Santa Ana Pueblo except for the land in the "Santa Ana Pueblo Spanish Grant". It should be added that the authority is not necessary for most tribal leasing activities and may work to the detriment of those tribes which do not have the technical expertise in complex business leasing and might be pressured into leases with unnecessarily long terms.

While the authority is a concern and adds responsibilities to the BIA as trustee, we do not object to the Pueblo's request.

The 99-year leasing authority would not extend to the land known as the "Santa Ana Pueblo Spanish Grant". The Pueblo has identified these lands as not suitable for long term development because of historical and religious significance and have restricted their development.

The Pueblo of Santa Ana has initiated short and long range economic development planning and initiatives. The Pueblo is strategically located adjacent to major interstate highways and railroad lines. The Pueblo has ample water resources and utilities available with large tracts of land available and well suited for development (commercial or industrial). Its lands are within commuting distance of Albuquerque and are close to the rapidly developing City of Rio Rancho, New Mexico. Santa Ana has a progressive tribal government that is embarking on plans to create a healthy reservation economy.

This concludes my prepared statement and I will be pleased to answer any questions the committee may have.

PREPARED STATEMENT OF LT. GOVERNOR ERNEST LUJAN

My name is Ernest Lujan. I am the Lieutenant Governor of the Santa Ana Pueblo Indian tribe.

INTRODUCTION

The proposed legislation, S. 2504 , is required to correct and resolve several land title problems which exist at the Pueblo of Santa Ana. It is, in effect, a house-keeping bill. The problems it will resolve include the following: 1) confirm mineral title to 494 acres of land to the Pueblo to facilitate development of the Pueblo's sand and gravel enterprise, 2) correct typographical errors in Public Law 95-498, the act of October 21, 1978, which confirmed title to certain Santa Ana Pueblo aboriginal lands in the Pueblo and 3) authorize the settlement by an exchange of lands of the Pueblo's trespass damage claim against the University of New Mexico and the State of New Mexico (United states v. University of New Mexico).

Each of the problems I have just mentioned is rooted in the general failure of the United States to recognize and protect the title of our Pueblo to the full extent of the lands which it used and occupied when the United States acquired the Southwest from Mexico in 1848. Had the United States properly recognized and protected the Pueblo's lands, as it was legally obligated to do, none of the above problems could have arisen. Consequently, it is appropriate that Congress act to resolve these problems.

We are also asking that this Committee resolve three further problems by additions to the bill in Committee. These are: 1) extend the Santa Ana Pueblo Reservation boundary to include lands the Pueblo will acquire from the University of New Mexico, 2)

transfer to the Pueblo of Zia a small parcel of land inadvertently conveyed by the United States to the Pueblo of Santa Ana and 3) extend 99-year leasing authority to certain of the Pueblo's lands to facilitate economic development.

SECTION BY SECTION ANALYSIS OF THE PROVISIONS OF THE PROPOSED LEGISLATION

Section 1.

Section 1 confirms the beneficial interest of the United States in the minerals underlying Section 19, Township 13 North, Range 4 East, a partial land section consisting of about 494 acres that adjoins the west side of Santa Ana's El Ranchito land, in trust to the Pueblo of Santa Ana. In 1936, the United States issued a patent to these lands to one Eva Wade Duke. Issued under the Stock-Raising Homestead Act of 1916, 43 U.S.C.§399, the patent reserved "all the coal and other minerals" to the United States.

Santa Ana has long viewed these lands as belonging to the Pueblo by virtue of the Pueblo's uninterrupted aboriginal use of them for centuries, and its purchase of them in the early 1700s from Spaniards to whom they were purportedly granted in the late 1600s. There is legal authority for the position that the issuance of the Homestead patent did not extinguish the Pueblo's aboriginal Indian title. See, e.g., United States v. Santa Fe Pacific R.R., 314 U.S. 339 (1941). Rather than assert its claims through the costly, time-consuming and unpleasant device of litigation, however, Santa Ana began purchasing this property from its non-Indian owners in September, 1981. The Pueblo presently owns all of the surface interests in this section. The northerly portion of the section contains extensive deposits of

good quality gravel, and the price paid by the Pueblo for that tract primarily reflected the value of the gravel deposits which the Pueblo thought it was purchasing. The Pueblo has established a tribal sand and gravel enterprise there to create jobs for tribal members and some income to the tribe.

The need for federal legislation transferring the government's interest in the minerals to Santa Ana became a matter of some urgency after the recent United States Supreme Court decision in Watt v. Western Nuclear Corporation, 462 36, 103 S. Ct. 2218 (1983). In that case, the Supreme Court held that the reservation of "coal and other minerals" under the Stock-Raising Homestead Act includes gravel. The Supreme Court decision had a markedly negative impact on the tribe's business, as it arguably removed from tribal ownership the resource on which that business is based. At the time the tribe purchased the land, it was thought by many that gravel was not a mineral within the terms of the patent. Section 1 of the bill will restore the gravel to Santa Ana to enable it to resume its enterprise and help build a viable economic base for the Pueblo. It will also prevent any conflicts that might arise from future attempts by the BLM to lease the minerals in this tract to anyone other than the Pueblo.

It should be noted that from a mangement standpoint, transfer of the minerals to the Pueblo makes far more sense than does retention of control by the BLM, since the tract is surrounded on three sides by Pueblo land (and on the fourth by state park land, part of which may eventually be conveyed to the Pueblo; see discussion of Section 3 of this bill). Other than the gravel deposits, there is no known mineral potential in this land.

Subsection 1.(a)

Section 1(a) effectuates the transfer of the minerals as explained above.

Subsection 1.(b)

One of the consequences of the Supreme Court's decision in Watt v. Western Nuclear Corp. is that it raises the possibility of claims for trespass by the United States against the Pueblo of Santa Ana for the Pueblo's removal and exploitation of the sand and gravel deposits on the lands the Pueblo purchased. Subsection 1(b) waives any charges or claims the United States may have against the Pueblo for its removal or exploitation of such deposits subsequent to September 29, 1981, the date the lands were conveyed to the Pueblo by warranty deed from the prior non-Indian owners.

Subsection 1.(c)

Two of the parcels the Pueblo has acquired in Section 19 are being purchased pursuant to real estate contracts. Subsection (c) assures that in the event of default by the Pueblo on the real estate contracts, and repossession of those tracts by the sellers, the surface interests of the sellers in Section 19 will not be disturbed by virtue of Pueblo ownership of the minerals. This subsection prohibits any entry onto those lands by the Pueblo for the purpose of mineral development without the explicit written consent of the surface owner. This actually gives the contingent surface owners greater protection from mineral development activities than they enjoy presently.

Section 2.

In 1978 Congress passed Public Law 95-498, which restored to Santa Ana's control certain areas of public domain lands that the Pueblo had previously used and occupied for centuries. Several errors were made in the descriptions of the lands affected by that Act, however. By Joint Resolution approved on November 16, 1979, 93 Stat. 858, one of the most substantial of those errors was corrected, but the others have never been remedied, and thus technical defects have remained in the description of the lands. This section comprehensively remedies those defects.

Paragraph 2.(b)(1)

This paragraph deletes a comma that was incorrectly placed in describing lands conveyed in Section 23 of Township 13 North, Range 3 East.

Paragraph 2.(b)(2)

In describing lands conveyed in Section 23 of Township 13 North, Range 3 East, the 1978 Act excludes "Rec. PP CL 10/10/62 and existing rights-of-way" from the conveyance. Paragraph 2.(b)(2) of the proposed bill deletes "Rec. PP CL 10/10/62", inasmuch as Bureau of Land Management records show no such easement or reservation. With this correction, only existing rights-of-way will be excluded from the interests conveyed in Section 23 of Township 13 North, Range 3 East.

Paragraph 2.(b)(3)

Paragraph 2.(b)(3) corrects an error in describing lands conveyed in Section 25 of Township 13 North, Range 3 East. The 1978 Act reads "northeast" at a point where it should read "southeast", and this error is corrected by this Section of the proposed Act.

Paragraph 2.(b)(4)

The 1978 Act provides for the conveyance to the Pueblo of several lots in Section 9 of Township 13 North, Range 4 East, including a Lot 8. A review of the BLM's official survey plat reveals however that no Lot 8 exists nor ever did exist in Section 9 and that the Master Title Plat, which was prepared from the official survey plat, was in error in indicating the existence of a Lot 8. Paragraph 2.(b)(4) of the proposed Act therefore deletes the 1978 Act's reference to "Lot 8".

Paragraphs 2.(b)(5) and (6)

The 1978 Act directed the Secretary of the Interior to acquire for the Pueblo all State school lands in Section 2 and 16 of Township 13 North, Range 3 East, in Section 36 of Township 14 North, Range 3 East, and in Section 32 of Township 14 North, Range 4 East. At the time the Act was passed, it was assumed that all of the above described lands were still in fact in State ownership. It was subsequently discovered, however, that

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approximately 326 acres of these State school lands had been condemned by the Corps of Engineers in connection with the Jemez Canyon Dam Project and were therefore actually in federal ownership. As it was the intention of the 1978 Act to transfer all federal lands in this area to the Pueblo, paragraphs 2.(b)(5) and (6) of the proposed bill amends the 1978 Act to include the conveyance of these omitted lands to the Pueblo.

Subsection 2.(c)

Subsection 2.(c) of the proposed Act allows the United States to retain an easement of access upon existing rights-of-way for the purpose of the operation and maintenance of the Jemez Canyon Dam. The provisions of this subsection are complementary to those of paragraphs 2.(b)(5) and (6) which convey to the Pueblo lands condemned by the Army Corps of Engineers for use in connection with the Jemez Canyon Dam and Reservoir Project. This subsection also provides that Santa Ana Pueblo shall enjoy full use of that easement to the extent tha its use does not interfere with the reasonable operation and maintenance of the Dam.

Subsection 2.(a) and Paragraph 2.(c)(1)

Subsection 2.(a) and paragraph 2.(c)(1) make minor technical changes in wording of the 1978 Act necessitated by the above-described amendments to the Act.

Subsection 2.(d)

Subsection 2.(d) of the proposed Act changes the approximate number of acres of State school lands to be acquired under the 1978 Act from 2004.05 acres to 1678.05 acres. This reduction is the result of the fact that, as explained in the discussion of paragraphs 2.(b)(5) and (6) above, approximately 326 of the acres thought to be State school lands at the time of the 1978 Act's enactment are actually federally-owned as a result of the Army Corp of Engineers' condemnation of them in connection with the Jemez Canyon Dam Project.

Section 3.

In the course of reviewing possible trespass claims that would be barred by the running of the statute of limitations contained in 28 U.S.C. §2415(g), Santa Ana's attorneys noticed that a portion of a state-run park annd monument had been located on Santa Ana lands. Subsequently, at the Pueblo's request, the United States filed suit against the State and the University of New Mexico over the trespass. The parties recently arrived at an agreement that settles this matter, and this section of the proposed bill contains provisions essential to implementation of the settlement.

The area of concern surrounds and includes an ancient pueblo ruin known as Kuaua, situated on the west bank of the Rio Grande near the southwest corner of Santa Ana's El Ranchito lands. It is believed by many that it was here that the famous Spanish exploror Francisco Vasquez de Coronado and his men wintered in

1540-41, during their celebrated first exploration of what is now the American Southwest. Although Coronado has been commended for his usually equitable dealings with the Indians he encountered, his behavior toward the residents of Kuaua was hardly exemplary. The Indians took Coronado in and fed him and his men through the winter. The Spaniards continued to make greater and greater demands upon the Indians however, and finally, in anger at resistance to their demands, put the pueblo to the torch and left. The village was apparently abandoned not long afterward, although there is evidence of intermittent occupancy into the 1600s.

Following the move by Santa Ana from its old village on the Jemez River to the farms along the Rio Grande (the El Ranchito tract, which the Pueblo purchased from Spanish settlers in the 18th century), Santa Ana exclusively used the lands surrounding the Kuaua site and far to the west for grazing and other purposes, well into the present century.

In 1935, the University of New Mexico was given a patent to most of Section 30, Township 13 North, Range 4 East, (which includes the ruins, and abuts Santa Ana land on the east). The patent, like the Act that authorized it, specifically provides that the land is to be used for archeological purposes only, and includes a reverter to the United State in the event the University attempts to convey the lands to any third party. The University excavated the ruin, and found that a small part of it extended onto Santa Ana Pueblo land. It proposed to the BIA that a strip of Santa Ana land adjacent to the University patent be

traded for a 100-foot-wide strip on the northern and western edges of the patented lands, and legislation was actually passed by Congress authorizing such a trade (See the Act of June 8, 1940, 54 Stat. 253.)

Santa Ana would not consent to the trade and the transaction was never carried out. The University apparently assumed that it had been, however, for it and the State of New Mexico after it used and occupied the strip of Santa Ana land, and fenced off the 100-foot strip of patented lands.

In 1975, the University leased the patented lands to the State of New Mexico for development of a state park centered on the ruins. The State created and developed two park units; Coronado State Monument, consisting of the ruins and a visitor center, and Coronado State Park, immediately to the south, consisting of several picnic and camping sites. Numerous improvements constructed by the State as part of this development, especially in the park unit, are situated on Santa Ana land and are in trespass.

The United States filed suit against the State and the University over this trespass in 1980, United States v. University of New Mexico, 731 F.2d 703 (10th Cir. 1984), cert. denied, _____U.S. _____ (1984). After lengthy settlement discussions, the parties have reached agreement on a settlement of this case (which is still pending in United States District Court after the government successfully appealed the district

court's dismissal of the damage claim), under which the Pueblo will convey to the University the land being used by the state park and monument, and the University will convey to the Pueblo the bulk of the patented lands not needed for park or monument purposes, in addition to granting the Pueblo certain other consideration. Because of the patent restrictions and the nature of Indian lands, however, the settlement agreement requires congressional action before it can be effectuated. The agreement provides that if Congress does not pass the needed legislation by December 31, 1986, the agreement will expire. This section of the proposed Act provides authority for settlement of the dispute in accordance with the agreement by permitting the Pueblo to convey the strip originallly sought by the University in exchange for conveyance to the Pueblo of a portion of the patented lands. It also provides for removal of the use restriction on the patented lands conveyed to the Pueblo, and imposes certain consultation obligations on the Pueblo with respect to development of the lands conveyed to it.

Paragraph 3.(a)(1)

Paragraph 3.(a)(1) authorizes the University of New Mexico to convey to Santa Ana "all or any part" of the lands patented to it by the United States in 1935. Such conveyance is presently prohibited by the terms of the patent and by the Act that authorized the issuance of the patent, the Act of August 19, 1935, P. L. No. 284, 49 Stat. 659. The exact description of the lands conveyed is contained in the agreement of the parties (and

see paragraph 3.(c)(1)); the area to be conveyed hereunder comprises about 120 acres on the west and north sides of the patented parcel.

Paragraphs 3.(a)(2) and (3)

Paragraph 3.(a)(2) provides that on their conveyance to Santa Ana, the lands conveyed will not be subject to the use restriction contained in the patent. In addition, paragraph 3.(a)(3) imposes on the Pueblo a requirement contained in the settlement agreement, that the Pueblo consult with the Museum of New Mexico concerning any possible adverse impacts on the Monument of any development of the lands within 100 yards of the Monument boundary.

Subsection 3.(b)

Subsection 3.(b) authorizes the Pueblo to convey to the University those lands on which the State is in trespass, (a parcel of about 26 acres) in exchange for the lands conveyed to the Pueblo pursuant to paragraph 3.(a)(1).

Subsection 3.(c)

Rather than set out the full legal descriptions of the parcels to be conveyed hereunder, subsection 3.(c) provides that the Secretary of the Interior shall publish the correct descriptions in the Federal Register within 60 days after this bill becomes law, following which the conveyances may occur.

Section 4.

Section 4 contains provisions generally applicable to each of the three prior section of the Act.

Subsection 4.(a)

Subsection 4.(a) provides for the protection of all valid existing rights of third persons in the lands to be held in trust for the Pueblo of Santa Ana pursuant to the Act. This subsection provides that nothing in the Act shall deprive any person of any valid existing right of use, possession, contract right, interest or title in any of the trust lands within the purview of the Act or of any existing right of access to public domain lands over and across such trust lands as determined by the Secretary of the Interior. Subsection 4 (a) also provides for the continuation in force and effect, according to their terms, of all mineral leases, including oil and gas leases issued or approved pursuant to federal law prior to the enactment of the Act. All applications for mineral leases involving trust lands within the purveiw of the Act however, which are pending on the date of enactment (we are aware of none), are to be rejected and the advance rental payments returned to the applicants. Since leases have not yet been issued or approved on any pending applications, no valid existing rights can have vested in applicants.

Subsection 4.(b)

Subsection 4.(b) makes applicable to the lands to be held in trust for Santa Ana Pueblo under the Act, those laws and regulations applicable to other property held in trust by the United States for the Pueblo.

Subsectin 4.(c)

Lands held in trust for Indian tribes by the United States and receipts therefrom are, in general, not subject to federal, state or local taxation. In addition, the distribution of the receipts from such trust property to tribal members is generally not taxable to those members as income resources nor is it used as a basis for denying or reducing the financial assistance or other benefits to which a tribal member or his household would otherwise be entitled under the Social Security Act or any other federal or federally-assisted programs. Subsection 4.(c) of the proposed Act explicitly reiterates these general principles with respect to the lands to be held in trust under the Act and to the proceeds therefrom.

ADDITIONS TO BILL IN COMMITTEE

Three additional matters have come to our attention since this bill was drafted and introduced which should be resolved by this legislation. They are: 1) the transfer from Santa Ana Pueblo to Zia Pueblo of 18 acres of land erroneously placed in trust for Santá Ana in 1961, 2) extension of the Pueblo Reservation to include the lands to be acquired by the Pueblo

under Section 3 of this bill and 3) amendment to 25 U.S.C. †3415 to allow 99-year leasing of a portion of our lands. We are requesting that this Committee resolve these matters by making the additions to the bill described below in Committee.

In 1961, 18.04 acres of land were erroneously transferred by the United States to our Pueblo when they were intended to go to the Pueblo of Zia. The Bureau of Indian Affairs has asked us to consent to a congressional conveyance of the beneficial interest in these trust lands from the Pueblo of Santa Ana to the Pueblo of Zia. Our Pueblo Council has authorized this transfer by Council Resolution. To take care of this, we are requesting the addition of a new subsection 2.(e) to read as follows:

> (e) Lots 7 and 8, section 5 , Township 14 North, Range 3 East, N.M.P.M. containing 18.04 acres more or less, are hereby declared to be held by the United States in trust for the benefit of the Pueblo of Zia.

We are requesting that the following language be added to the bill as subsection 3.(d) for the purpose of extending the south boundary of the Santa Ana Pueblo Reservation to include lands which the Pueblo will reacquire pursuant to the settlement of the Coronado Monument trespass case, as authorized by the proposed legislation:

> (d) Upon the completion of the conveyances authorized herein, the south boundary of the Santa Ana Pueblo Reservation shall be extended to the south so as to include the land conveyed to the Pueblo of Santa Ana.

The Pueblo has received an attractive offer from a wallboard company which wants to lease Pueblo lands for a new plant. Because of the substantial investment which the company will make in the plant, they require a 99-year lease. We are asking that a section 5 be added to the bill by this committee to extend the 99-year leasing authority of 25 U.S.C. Section 415, the BIA's general leasing statute, to certain of our lands to allow us to enter into a lease with the wallboard company.

Section 5 should read as follows:

> Section 5. The second sentence of subsection (a) of the first section of the Act entitled "An Act to Authorize the Leasing of Restricted Indian Lands for Public, Religious, Educational, Recreational, Residential, Business and Other Purposes Requiring the Grant of Long-term Leases", approved August, 1955 (69 Stat. 539; 25 U.S.C. §415) is amended by inserting "the Pueblo of Santa Ana (with the exception of the lands known as the 'Santa Ana Pueblo Spanish Grant')," after "the Dania Reservation".

CONCLUSION

In conclusion, we urge that this Committee report favorably on this bill, including the additions we have requested. Favorable action by this Committee and the Congress will materially assist the Pueblo of Santa Ana at no cost to the federal government.

PREPARED STATEMENT OF HAZEL ELBERT

Mr. Chairman and Members of the Committee, I am pleased to present the views of the Department of the Interior on H.R. 3214, a bill "To provide for the use and distribution of funds awarded to the Cow Creek Band of Umpqua Indians in United States Claims Court Docket Numbered 53-81L, and for other purposes."

We oppose H. R. 3214 as passed by the House of Representatives and offer two alternatives for your consideration.

The judgment funds involved were appropriated on August 21, 1984 and a "Results of Research Report" was prepared by the Bureau of Indian Affairs to determine the beneficiaries of the funds. This research, using various archival and published sources, also examined relevant documents and testimony that had been accumulated during the Claims Court proceedings.

On the basis of the Results of Research Report, a Secretarial proposal was formulated taking into consideration the relevant provisions in P.L. 96-251 (the Cow Creek Claims Act of May 26, 1980) and P L. 97-391 (the Cow Creek Recognition Act of December 29, 1982). Under those Acts it is clear that only the descendants of the 1853 Cow Creek Band were to be beneficiaries of the award. The Secretarial proposal recommended a per capita distribution in which the tribe's share would be proportionate to the number of its members who are able to document 1853 Cow Creek Band ancestry. The tribal plan, which is in H.R. 3214, ignores existing law by programming all of the funds for the exclusive use of the tribe. Section 5 of P.L. 97-391 closed

the Cow Creek rolls and many were excluded who were eligible to be members. Although Section 6 of H.R. 3214 allows for Cow Creek descendants who are not tribal members to participate in some of the programs, we do not think this is adequate compensation for the legitimate descendants of the original Cow Creek Band.

A Hearing of Record was held on the Secretarial and tribal proposals in Eugene, Oregon on August 8, 1985. Some 230 oral or written statements were received concerning one or both plans. More than 67 percent of the responses were in favor of the Secretarial proposal or some form of per capita distribution. Included among these responses are those from several former board members of the Cow Creek Tribe, some of who were closely involved from the inception of the recognition and claims legislation.

We received a letter from several members of Congress requesting a cancellation of the Hearing of Record and that a Secretarial Plan not be submitted to Congress. The letter was dated August 1,1985 but was not received until two days before the Hearing of Record which was scheduled for August 8, 1985. Although this was too late to stop the Hearing, we did not submit a plan to Congress. H.R. 3214 was introduced on August 1, 1985.

H.R. 3214 provides for the distribution of funds appropriated to pay a judgment awarded to the Cow Creeks in Docket 53-81L. The bill would authorize the Secretary of the Interior to maintain these funds in trust for the tribe with fixed amounts being set aside for various programs. The interest earned on the funds could be used only for specified purposes. Any changes in use the tribe might want would require further legislation. The Secretary would have no authority or responsibility for the use of the funds. After enactment of this Act, the tribe could set its own membership requirements and Cow Creek descendants who are not tribal members would be

eligible for the scholarship and housing assistance programs proposed under the bill.

Previously, Congress has clearly intended that only the lineal descendants of the Cow Creek Band represented in the 1853 treaty signing should benefit from the claims award. Section 4(a) of P.L. 96-251 states "the term Cow Creek Band of the Umpqua Tribe of Indians means the group of persons descended from persons considered members of such band for purposes of the treaty entered into between such band and the United States on September 1853...", and section 5(b) of P.L 97-391 states that "Membership in the tribe pursuant to subsection (a) shall not entitle an individual, who is not otherwise entitled, to participate in any distribution of funds pursuant to a judgment under [P.L. 96-251] the Act approved May 26, 1980 (94 Stat. 372)." Section 4 of H.R. 3214 provides for the total judgment fund to be held in trust for the tribe and the interest to be used for tribal programs. The tribe as currently constituted is not a descendant entity and includes members who are not descendants of the Cow Creek Band as it was constituted in 1853. We believe that this inconsistency may create legal and equitable problems regarding who is eligible to receive money from the judgment award.

When Congress recognized the Cow Creek Band in 1982, that law specified that the Band's members would be those enrolled on the date of enactment. Since two rolls existed, neither of which was explicitly described in the legislative history of the bill, disputes have arisen. H.R. 3214 attempts to solve this problem identifying one roll, allowing additional names to be added and including the descendants of the people named. Although this clarifies the current membership, after this bill is enacted, the tribe could adopt any membership requirements thereby substantially expanding the Federal service population.

As the Committee knows, the Cow Creek Band of Umpqua Tribe of Indians has objected strongly to sharing this award with any who are not members of that Tribe. While we commend the Tribe on its willingness to program all of these funds, we oppose H.R. 3214 because:

(1) it ignores previous Acts of Congress as to who are the beneficiaries of the award;

(2) it excludes or limits benefits to some who should be beneficiaries;

(3) it disregards Secretarial review and approval; and

(4) it locks funds into specific categories that would require additional legislation to change.

In general, we support the concept of judgment funds being used for tribal programs. However, in this instance that approach is not fair since it provides compensation for individuals who are not descendants of the Cow Creek Band of 1853 and excludes individuals who are. Previous legislation was passed to remedy a wrong but if H.R. 3214 is enacted, that wrong will not have been remedied.

We note, however, that under Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977), it is clear that the judgment funds at issue in this bill are tribal property in which individuals, as such, do not have an interest. The manner in which Congress decides to program a judgment award will generally not be disturbed by the courts provided that the legislative judgment can be tied rationally to the fulfillment of the unique Federal obligation to Indians. Although it may be that the Weeks decision indicates that the Congress may distribute these funds to the present day tribe despite the fairness issue, we recommend that the bill be amended either (1) to simply authorize the Secretary to prepare a roll of Cow Creek descendants and

distribute these funds per capita, or (2) as proposed in the Secretarial plan which I mentioned before, to authorize a per capita distribution with the shares of the members of the Tribe to be paid to the Tribe for programming purposes. We believe that given the history of this group, these are the only equitable distribution plans for this award.

This concludes my prepared statement. I would be happy to answer any questions the Committee may have.

PREPARED STATEMENT OF NAOMI RAINVILLE GOULD
Member, Cow Creek Band of Umpqua Tribe of Indians
In opposition of H.R. 3214 and amendments
August 6, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am very grateful to be here today and to have the opportunity to speak on behalf of H.R. 3214 and amendments.

My name is Naomi Rainville Gould. My address is 2050 West 29th Avenue, Eugene, Oregon 97405. I am currently an enrolled member of the Cow Creek Band of Umpqua Tribe of Indians, a member of the Rainville Family and a descendant of Adelaide Petit Rainville. I am related to all of the original families, namely: Rainville, Rondeau, Rondeau/Young, Dumont, LaChance and Parazoo. These families lived together, inter-married and occupied the Treaty land prior to 1853.

I have worked for over 12 years with other tribes of western Oregon as well as the Cow Creeks. I have served on the Board of Directors of the Cow Creeks, I have served as treasurer, enrollment secretary and, also, worked on the Cow Creek Enrollment Project under the supervision of Dr. Stephen Dow Beckham. This is my fourth trip to Washington, D.C. to testify regarding Cow Creek issues. I have, personally, paid my own expenses for three of these trips.

I am here today to voice my opposition to H.R. 3214 and amendments. My testimony is in two parts. First, I will reference the disbursement plan and, second, I will comment on the proposed amendments.

H.R. 3214 - Disbursement Plan

The Elderly Assistance portion of the plan discriminates against other Tribal members. I have no children and no grand-

children. But, if I did, I would not feel I should accept a $5,000.00 payment when those under the age of 50 years would not qualify.

Many comments have been made regarding the Tribal vote on the distribution plan held May 19, 1985. This vote of 78 - 16 was very inviting to the elders who had been "baited" with a one-time payment of $5,000.00. Sue Shaffer, Chairperson of the Cow Creeks, stated in her testimony of December 10, 1985 before the House Committee on Interior and Insular Affairs, that this vote was by "secret" ballot. This is not true---the membership list was numbered, as were the ballots. It was simple to match numbered ballots with the membership list and immediately the 16 members opposing the plan were identified.

With regard to the Higher Education and Vocational Education Program, I feel this would be far too much to spend on these programs. Funding for these purposes is available from many other sources. A good percentage of Cow Creek members have already benefited from benefits like those outlined in the Housing Assistance Program.

I certainly oppose the Economic Development and Tribal Center part of the disbursement plan. The Tribe has been functioning for over 3 years now---they have spent thousands on Economic Development and what do we have to show for it? Nothing!!! The Evergreen Motel property is a "white elephant"---it will never pay its own way, let alone, leave anything for dividends to the members. We need good productive business ventures. Business ventures that would help the unemployment, the economy and pay annual dividends to the membership.

The Miscellaneous Activities of the Board is a good "cover-up" for the Board to continue with their high cost of administration and still have funds available for past and future outside "professional" services.

In summing up my opposition to the disbursement section of H.R. 3214, I must say---This plan discriminates with regard to membership---it is unfair and it does not provide for equality to all members. It is far from the original intent of Public Law 96-251. I will admit the plan has some merit---very little. Perhaps, under good administrative management, honest and above-board, some phases might be workable. These reasons are why I favor an equal per capita payment for all qualified members---the B.I.A. should determine eligibility---not a small group of people---some of them not qualified because they are not descendants of ancestors who inhabited the land prior to the Treaty of 1853. Now, I will speak about the second part of my testimony:

H.R. 3214 - Amendments

Amendment No. 1, Page 2, (4) states: "the term "tribe's governing body" shall mean the governing body as determined by the Tribe's governing documents". At the present time, the second rough draft of the Tribal Constitution has been referred back to the Tribe for changes---one being, the "tribe's governing body". Upon approval of a Constitution by the B.I.A., it will be sent to all tribal members, of voting age, for their approval. This action has been confirmed by B.I.A. officials. Therefore, at the present time the tribe has no Constitution. The Honorable Michael R. Hogan, U. S. District Court, Eugene, Oregon, issued an Opinion dated July 28, 1986 on Civil Case No. 85-6137-E known as Robert L. Buschmann and plaintiffs against the Cow Creek Band

of Umpqua Tribe of Indians, Inc. and defendants. The Opinion set aside the 1981 by-laws. Therefore, the requirements for membership, as defined in the 1978 by-laws, would be the determining factors for membership eligibility.

Amendment No. 2, Page 12, Sec. 5 (a). Here again, the tribe's governing documents are in question regarding a Constitution, By-laws, etc. This amendment is not in line with Public Law 96-251 and Legislative History. Interrogatory 14 does not follow the same guidelines.

Amendment 3, Sec. 6, (a) and (b) is somewhat misleading--- the term "non-tribal" member should be "unenrolled" tribal member. This amendment as written creates a "second class" citizenship.

Public Law 96-251 was written and passed with the intent to give all members equal rights and a voice in tribal affairs. I know there are a lot of "pros and cons" regarding membership. There are 351 persons known as the Cow Creek Descendants Organization---there are 51 members of the Marshall Family---40 members of the Dompier Family and perhaps 25 - 50 members from other families who claim to be Cow Creek descendants. If these people can prove their ancestry and are qualified, it is my belief that they should become enrolled members.

In conclusion, I believe in a per capita distribution. I believe in fairness and equality for all members. I do <u>not</u> believe the affairs of the tribe should be entrusted to a few persons on a Board of Directors. The entire Tribal Council should have a voice in all operations of the tribe.

My mother, Lucile B. Rainville, passed away March 8, 1986.

She had been associated with the Cow Creeks since 1910. She believed in, and worked for, fairness, honesty and equality for all descendants of the persons who were in the Cow Creek territory prior to the Treaty of 1853. She always maintained that through co-operation and working together for the good of the entire tribe, the tribe would prosper and be rewarded for the long struggle for recognition. I hope that someday, in the near future, her visions will become a reality.

Thank you for allowing me to testify here today. May God bless you and guide you in your endeavors.

Respectfully submitted,

Naomi Rainville Gould

Naomi Rainville Gould

August 6, 1986

PREPARED STATEMENT OF AMARYLLIS FREEMAN YOUNG

My name is Amaryllis Freeman Young, I descend from the Dumont family. This is the fourth time I've been to Washington, D. C. I would like to state only once in 1981, was my trip paid for by a grant. In 1979, in 1985, and this trip my family and I have paid for, out of our own resources. Recently, May 29, I had major surgery for cancer. My doctor released me to come to offer my testimony. I want fairness, equality and justice for all my people.

I feel Interrogatory 14, mentioned in H.R. 3214, should be stricken from the Bill. None of the enrolled members have seen this roll. None know if they are or not on it. Worse yet, is a closed roll and there are blood descendants left off. This Bill would undo what our Litigation Law, P.L. 96-251 gave to us. I feel P.L. 96-251 should be followed, it protects all enrolled members, plus those who have been denied enrollment. And, it wouldn't allow the wrong people to be paid, because the enrollment requirements include proving one lineage prior to the 1853, Treaty. P.L. 96-251, should be the basis of any amendments made to H.R. 3214.

The amendment to compensate deserving non-enrolled members is not good. They have the birthright, by descendency, to be enrolled members. Monetary compensation means nothing, if they are to be continued to be denied enrollment. Enrollment, to belong, to be a part of a Tribe is very important to all Indian people. Therefore, this amendment is wrong.

The Elderly Assistance Program also descriminates. I am eligible for this proposed one time payment of $5,000.00, yet I do not feel I'm more deserving than anyone else. I feel the money should be left in one lump sum, to draw interest and as a certain age is reached, beginning from the eldest, everyone should recieve money.

P.L. 96-251, rules out dictatorship, it explains the Tribe's governing body. I ask that P.L. 96-251, Section 4 (a) and (b) be the amendments for H.R. 3214.

P.L. 96-251, Section 4, (a) For purposes of this Act, the term "Cow Creek Band of the Umpqua Tribe of Indians" means the group of persons descended from persons considered members of such band for purposes of the treaty entered into between such band and the United States on September 19, 1853 (10 Stat. 1027), as ratified by the Senate on April 12, 1854, except that such group shall not include any person, or the descendent of any person, who shared in the distribution of funds under the Act entitled "An Act to provide for the termination of Federal supervision over the property of the Klamath Tribe of Indians located in the State of Oregon and the individual

members thereof, and for other purposes", approved August 13, 1954 (25 U.S.C. 564 et seq.), or under the Act entitled " An Act to provide for the termination of Federal supervision over the property of certain tribes and bands of Indians located in western Oregon and the individual members thereof, and for other purposes", approved August 13, 1954 (25 U.S.C. 691 et seq.).

P.L. 96-251 Section 4 (b) In any proceeding under this Act, the Council of the Cow Creek Band of the Umpqua Tribe of Indians, a non-profit corporation incorporated in the State of Oregon, shall be considered to be the governing body of such band.

Based on the enrollment qualifications of P.L. 96-251, I believe the tribal roll should be opened for a period of 90 days. If everyone in the Tribe has an equal say in our tribal government and if the money is disbursed fairly and equally, then I have no objections to the money being used for a democratic form of government and for the good of all.

I thankyou for granting me the privelege of presenting my views on the vital issue of H.R. 3214.

Amaryllis J. Freeman Young

Amaryllis Freeman Young

PREPARED STATEMENT OF STEPHEN DOW BECKHAM

Professor of History
Lewis & Clark College

In Support of H. R. 3214

Before The
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

August 6, 1986

I am Stephen Dow Beckham. I reside at 1389 S. W. Hood View Lane, Lake Oswego, Oregon 97034. I am a Professor of History at Lewis and Clark College, Portland, Oregon. I served as the expert witness for the plaintiff Cow Creek Band of Umpqua Tribe of Indians in its land claims litigation in the United States Claims Court which resulted in the judgment addressed in this legislation. I have researched and written several books on Pacific Northwest Indians and appeared in a number of federal court Indian cases as an expert witness. I first wrote about the Cow Creek Band of Umpqua in the book Requiem for a People, published in 1971.

I do not speak alone here today. I speak for thousands upon thousands of Americans who since the creation of the Indian Claims Commission in 1946 have watched the appropriation and dispersal of tens of millions of dollars in payments of Indian claims. What I want to address is the tragedy inherent

in the disbursement of those funds. The judgments awarded by the Indian Claims Commission and the U. S. Claims Court are the modest and belated effort in monetary terms of the American government to salve the nation's conscience and, in a token gesture of belated "justice," to make monetary payments primarily for the past unconscionable takings or mismanagement of Indian lands and resources.

Only in recent years did the stark reality of the nature of these judgment funds settle in. The vast majority were distributed in one-time-only per capita payments to plaintiff tribal members. Gone were the lands, the fish, the timber, the game -- the legacy of the ages. And gone -- even within hours or days -- were the per capita payments.

I remember vividly the spate of spending and the fabled moments for car dealers in Klamath Falls, Oregon, when the Klamath Judgment Fund and the assets from the sale of the Klamath Reservation arrived as personal checks in south-central Oregon. The Klamaths were still Indians but as soon as these payments were made they no longer had their land base and their tribe had no assets. They retained their language and much of their traditional culture but their resources were gone.

Congress belatedly recognized this problem with the enactment in 1973 of legislation which provided that between 20 and 100 percent of a judgment fund should be set aside for a

tribe. H. R. 3214 proposes a 100 percent tribal distribution plan carefully developed over nine months by the Cow Creek Band of Umpqua. It is a plan with which I became increasingly familiar as ideas surfaced and were referred to me for comment and assessment as an outside resource person. This bill endorses the tribal plan establishing special programs -- operating only on the annual interest -- to assist the tribal members in housing, education, employment, and self-help.

This tribal plan has a lot to speak for it. It recognizes the 68 years of effort and support expended since 1918 by the tribal elders to secure a day in court and gain a judgment. It recognizes that those over age 50 have less interest in education and fewer years to benefit, and thus provides a one-time only Elders' Benefit Program with a projected payoff in seven years from the interest on one investment account.

Further, the plan provides for the redistribution of the principal funding the Elders' Benefit Plan into three accounts investing in the tribe's future. By that, I mean an investment in improved quality of life and opportunity for tribal members. The accounts will fund programs in education, economic development, and housing. A modest fourth account will generate sufficient revenues to fund the necessary expenses of the tribal Board which has oversight of, and responsibility for, tribal administration, business affairs and policy.

As a young person growing up in Western Oregon, I remember the "Indian money" checks which came as a result of the Western Oregon Judgment Fund, a series of payments made pursuant to cases before the Indian Claims Commission. Where are those monies today? They are 30 years gone. Where are those tribes today? They yet exist and are, for the most part, federally-recognized, but they have no assets. They have little bargaining power in modern America.

The Cow Creeks seek a different future. They want to proceed with money in the bank. They and I view this judgment fund as a last-chance legacy from the past. Money is power and, as we know, Indian tribes in America have had far too little of either these past two centuries. This bill affirms a program of stewardship. It promises wise marshalling of resources and a legacy from the 1980's for future generations of tribal members. While it may not buy power, it has the potential to enable this tribe to stand as equal both today and tomorrow.

The Bureau of Indian Affairs has questioned whether or not any tribal member can trace descent from the treaty signers. As an ethnohistorian, I can not confirm that anyone alive today is directly descended from one of the four treaty signers. As to the aboriginal band alive in 1853, although a roll was prepared at the time of the Rogue River Indian Wars in 1855, no

copy of its survives. Superintendent Joel Palmer in 1853 distributed clothing, pursuant to the treaty, to 218 tribal members. Residents of the region confirmed in the years after 1856 that upward of 100 members of the Cow Creek Band remained hidden in the hills of their old homeland along the South Fork of the Umpqua River.

Documentary records confirm the presence of the families from which the present tribe is descended as resident in the aboriginal homeland. In 1852, for example, Alexander and Josephte Dumont, ancestors of several present members, lived on the South Umpqua River. On July 19, 1847, Nonta, first married To Charlotte Molalala, married a second time to her sister -- Catherine Ampkwa [Umpqua]. This marriage is recorded in the Catholic Church records, St. Paul, Oregon, on that date. Susan Crispen Shaffer, the present Chairperson, is a direct lineal descendant of Nonta and Charlotte Molalala.

There are two families, based upon my research as the tribe's Enrollment Project consultant, that have problems relative to the judgment fund. There are approximately 114 lineal descendants of David Narcisse LaChance. I have identified this man as often resident upon the Grand Ronde Reservation, where his mother died on October 10, 1912. He was a beneficiary of the Western Oregon Termination Act. By the terms of the Jurisdictional Act (Pub.L. 96-251) which led to

this judgment fund, any and all descendants of Mr. LaChance would be barred from participation in any per capita distribution. This includes specifically Amaryllis (LaChance) Dumont Freeman, sometimes known as Amaryllis Young, and her sister Janie (LaChance) Heussner, both of whom are scheduled to testify today in opposition to the tribal plan under which they would be beneficiaries and in support of a plan which would deny them any benefit at all.

The second "problem" family is that of the Rainvilles, namely that of witness Naomi (Rainville) Gould, also scheduled to testify today. Documentary records confirm that this family did not appear in the Umpqua watershed until the 1880's at the earliest. Further, Mrs. Gould's own family history, submitted to Congress in 1979, at the time of hearings on the Jurisdictional Act, confirmed that their ancestry was Shuswap (Souchouabe), a Canadian tribe from the interior of British Columbia. Nothing in my research work in the tribe's enrollment project has altered that finding; it only confirmed it and I further discovered that the Rainville family continues to this day to be beneficiaries to lands upon the Flathead Reservation in Montana. Mrs. Gould cannot establish tribal membership through descent from the aboriginal band or residency within the aboriginal area at the time of the treaty; however, her family has been in the Tribe for nearly 100 years

and from a political standpoint does, and should, enjoy enrollment. So, although their tribal membership is legitimate, their claims to aboriginal entitlements are not.

In my opinion, the best interests of every member of the tribe will best be served by Congressional approval of the tribal plan. And with implementation of this plan, it would be known that the Cow Creek Band of Umpqua -- alone among all Oregon Indian tribes to receive a claims judgment -- has opted to invest its monies wisely. The tribe has embraced a program of stewardship consonant with its past attitudes toward the land. I urge Congress to approve this tribal plan and invest its faith in a tribe's responsible response to its one-time-only opportunity to retain its patrimony.

Thank you for permitting me to appear before the Committee today.

PREPARED STATEMENT OF ROBERT L. BUSCHMANN

H.R. 3214

Submitted: August 6, 1986

HONORABLE CHAIRMAN and respected Members of the Senate Select Committee on Indian Affairs. My name is Robert L. Buschmann. I am a direct lineal descendant of the Cow Creek Indians for whom H.R. 3214 was introduced. I wish to state that I am physically handicapped and totally disabled. I do not make this statement to solicit sympathy, charity, pity, or any other feelings of compassion. This information is provided specifically for the purpose of an explanation of why I am unable to appear personally before the Committee to present my Testimony regarding H.R. 3214.

I have been medically diagnosed as having Irreversible Chronic Obstructive Pulmonary Disease. My body requires 3 extra liters per minute of oxygen, 24 hours a day. I am physically able to do very little. I can get around some if it becomes absolutely necessary, but I am pretty much confined to my home. My total monthly income is a Social Security Disability check in the amount of $360. Which means I am also financially unable to attend the hearings regarding H.R. 3214, cited as the "Cow Creek Band of Umpqua Indians Distribution of Judgment Funds Act". I therefore respectfully request that this, my written testimony, by accepted by the Committee and be made a part of the official records of the hearings on H.R. 3214.

PART I.

PERSONAL BACKGROUND OF WITNESS.

My name is Robert L. Buschmann. I reside at 8504 North Foss Avenue, Portland, Oregon 97203. I am currently an unenrolled member of, and a direct lineal descendent of the Cow Creek Band of the Umpqua Tribe of Indians, who lived in and occupied the lands described in the treaty of September 19, 1853, between the Cow Creek Band of the Umpqua Tribe of Indians and the United States of America. I have been extensively involved in Indian affairs and issues during the past ten years.

I co-authored, with Dowd Jackson (Klamath Indian Tribal Member), The Klamath Indian Game Commission regulations in 1975-76.

I co-authored, with John Young and Charles Jackson, the Cow Creek Umpqua Game Commission draft regulations in 1977-78 (UPPER UMPQUA WILDLIFE MANAGEMENT PLAN).

I authored and lobbied for the enactment of 1979 version of ORS 97-740 thru 97-750, the INDIAN BURIAL PROTECTION LAW for the state of Oregon.

I served as a Director on the Board of Directors of the Cow Creek Band of Umpqua Tribe of Indians between October of 1977 and August of 1979.

I was the duly authorized and lawfully appointed Tribal Researcher for the Cow Creek Tribe from November 13, 1977, thru July, 1979. I spent many hundreds of hours doing research in the National Archives in Seattle, Washington; San Bruno, Calif., Washington, D.C.; and the National Records Center in Suitland, Maryland; as well as spending many hours in the historic section of libraries and historical Societies in the Pacific Northwest. I compiled the Genealogical, Historical, and Legal data for Pub.L. 96-251 (Cow Creek Enabling Act, May 26, 1980, 94 Stat. 372.

I Co-authored P.L. 96-251, with Judge Richard C. Beesley, Klamath Falls, Oregon.

I authored or co-authored the Bylaws for the Cow Creek Umpqua Indian Tribe and corporation (1977 & 1978), Title IV-A Indian Education Project (Klamath Falls City School Districts 1 & 2), Klamath Inter-Tribal Services Inc. (Klamath Falls, Oregon), The Indian Child Welfare Committee Inc. (Klamath Falls, Oregon), Carefree Living Productions Inc. (Klamath Falls, Oregon), and Many Moons Productions Inc. (Portland, Oregon).

I drafted the history of the Cow Creek Band of Umpqua Indians for the ATLAS OF OREGON INDIANS, available from the Commission on Indian Services, Salem, Oregon.

I performed legal and historical research for the Klamath Tribe, Members of the Lower Klamath River Indians (Hoopa), and was directly involved in the legal research of the Eberhart Indian Fishing Case -recently overturned in the U.S. Court of Appeals.

I worked directly with Southern Oregon Indian Research doing research regarding the effects of termination on the Klamath Indian Tribe.

I have been involved with Title IV Indian Education projects during the past seven years and served as Chairperson for the Title IV-A Indian Education project of the Klamath Falls School Districts 1 & 2 for 4 1/2 years (1980-84). I have been a member of the Oregon Indian Education Association. I served on the Board of Directors of the Association and was awarded the Outstanding Layperson of the Year honor for 1983.

I have been a member of the National Indian Education Association during

the last six years and received the nomination for the National Outstanding Layperson of the Year, 1984.

I carried out extensive genealogical and historical research for various unenrolled Klamath Indians, and provided the documentation that ultimately led to their enrollment with the Klamath Indian Tribe.

This personal background information has been included as a part of this written statement specifically for the purpose of establishing the credibility of my testimony.

PERSONAL STATEMENT.

I am not a highly educated person. I am not a well paid lobbyist. I do not profess to be an Attorney and I do not claim to know any more about the law than any average citizen. I am just a humble Cow Creek Indian whose education has been gained from experience and the school of hard knocks rather than thru College classroom accomplishments. I am not a public speaker or speech writer and I do not have the experience that I know many of the other witnesses have. I will apologize now for what may be considered Crude, uneducated, un-diplomatic, and possibly offending statements. I call things the way that I see them and will not attempt to lessen the content of my testimony to keep from hurting anyones feelings. I have submitted this testimony because I care about what has happened to my people and what will happen to them if H.R.3214 is enacted into law containing the present language and without drastically amending that language.

I truly feel that I and many other opponents to H.R.3214 are at a great disadvantage regarding this legislation. The transportation and expense cost for the proponents testifying in support of H.R. 3214, have been paid out of Tribal Funds or by Federal Grant Moneys! Tribal Members opposing H.R. 3214, are not afforded the privilege of using Tribal or Federal Funds for their expenses and are required to pay their own costs for the opportunity of being in Washington D.C. to submit their oral statements!!

The availability of both Tribal and Federal funds to the proponents of H.R. 3214 counts in other ways too. It has purchased legal representation, an important consideration in our governmental system that vests so much authority in the judiciary. It has paid for influential "experts" (Stephen Dow Beckham, a well compensated lobbyist, moving beneath the cloak of distinguished degrees and university titles) to testify in court and other public forums such as this Congressional Committee, the public media of communication, and many regulatory

agencies. Many academic figures vastly supplement their salaries by telling exactly what their clients want them to. "Dr." Beckham is simply a lobbyist for persons having powerful personal (non-Indian and non-Tribal) selfish interests in the Cow Creek Indian Tribe (NON-COW CREEK INDIANS; Sue Shaffer, the Thomason Family members, and Dennis Whittlesey, the alleged Tribal attorney). Who would doubt or question the testimony of such a learned professor? After reviewing all of the testimony submitted to this Committee, I would think that the Committee Members would have MANY QUESTIONS of him!

Tribal Members who oppose H.R. 3214 realize we are fighting an uphill battle and we know that the possession of cash for conducting a campaign for or against a certain legislative goal can be a decisive factor in the outcome of the legislation.

We are fed up with being categorically and constantly placed in a second-classed status, and even though there is very little cash to support our fight, we know the fight has to continue until it is won. We are no longer satisfied to put up with the repression and discrimination we have faced. We are no longer willing to "wait until next year, next century before our LEGAL RIGHTS become a social reality.

Maybe, by turning into the nagging conscience of the Cow Creek Tribe, and I have to admit, winning the genuine hatred of some (Shaffer, Whittlesey, Beckham, etc.) I have at the same time shaken awake many others who no longer accept the unlawful and illegal methods and policies of these persons, who have made critical Tribal decisions, allocated their own values, and determined what Tribal members could do (or even think or not think). We are aware that if we don't have and show a great interest and oppose H.R. 3214, it could could possibly become law without resistance.

I have stood passively on the sidelines of the Cow Creek Tribe since September of 1979.(which happened to be the point in time when I became blacklisted in the Tribe after making an untimely, yet crucial, discovery which was damaging to one of the Cow Creek family's claim of descendency). I have watched the gross exploitation of the Cow Creek Tribe and its members until I can no longer just sit back and allow these things to continue. At least, not without bringing them out in the open. I have seen many greedy, conniving people, including unscrupulous Attorneys, Non-Cow Creek Tribal members, Government officials, and other non-Indian people, who have used their resources, influence, trust, and power to take advantage of the Cow Creek

Tribe, and its uninformed members.

My being blacklisted as an enrolled Cow Creek Tribal member, did not, and can not take away my Indian heritage and honor. I AM a Cow Creek Indian and I always will be! No one can take that away from me.

I am very deeply concerned with the methods used in bringing about H.R.3214, introduced by Congressman Jim Weaver on August 1, 1985. H.R. 3214 contains a plan for the distribution of judgment funds awarded in the Cow Creek land litigation case, U.S. Claims Court, Docket numbered 53-81L. The submission and request for the introduction of H.R.3214 was a secret, underhanded, well calculated attempt to bypass the normal legislative process.

The normal process for the distribution of Indian Claims Judgment Awards is regulated by Federal Statute. The law provides a process for concerned people to submit their testimony, support and/or objections regarding the matter at Public hearings, established and held by the Secretary of the Interior, Pursuant to the above referenced Federal laws. After the hearings, the Secretary then compiles all of the hearings testimony, other data, and documentation and submits all of the materials to the appropriate Congressional Committees; with his recommendation for the distribution of the judgment award funds. The Committees then study the materials submitted, determines if the Secretarial Plan is fair and equitable to everyone effected; and either accepts or rejects the plan. If the plan is rejected by the Committees, then THAT is the time for the introduction of legislation.

I feel that H.R.3214 was premature. Notice had been issued by the Secretary of the Interior prior to the introduction of H.R.3214 announcing the public hearings on a proposed Secretarial Plan. The intention being, to submit the final plan for the distribution of award funds to the appropriate Congressional Committees on or before August 20, 1985, as required by Pub.L. 93-134.

The majority of the Cow Creek Umpqua Indian Tribe was not even aware that H.R.3214 was being contemplated, let alone know that it had been scheduled for hearings on December 10, 1985.

I would request that the Honorable Committee Members consider the above referenced concerns in their contemplation of this very important legislation.

PART II:

STATEMENT OF OPPOSITION TO H.R. 3214

I wish to submit this statement on behalf of the Cow Creek Tribe, tribal

members, and myself, in total OPPOSITION OF H.R.3214.

NOT ONE OF THE AUTHORS OF H.R. 3214 OR THE WITNESSES THAT TESTIFIED IN SUPPORT OF THIS LEGISLATION at the hearings held on December 10,1985, by the House Committee on Interior and Insular Affairs; are COW CREEK INDIAN PERSONS OR DESCENDANTS OF COW CREEK INDIANS!!

I am sure that the small group of persons who requested Congressman Weaver to introduce this legislation convinced him that it had been reviewed and approved by the entire Cow Creek Tribal Council. I am requesting that before this Committee considers supporting the enactment of H.R.3214, that a complete and thorough investigation be conducted regarding this matter.

This devious, but clever plan to quietly push a bill through Congress was attempted for the purpose of accomplishing two major goals. One is the taking control of every individual Tribal members rightful share of judgment award funds, before the members can do anything about it, and the other, possibly the most important, is to secure Tribal Membership rights to NON-COW CREEK people. Many of the persons behind the legislation are NOT COW CREEK DESCENDANTS. If the Secretarial plan had been submitted and approved by the Congressional Committees, those persons would NOT receive benefits they are NOT entitled to. They would also LOSE the positions of power and control that they now currently hold. Those positions of power allow them to commit the corrupt practices I have referenced in this testimony.

Cow Creek Tribal officials have and will continue to misappropriate Tribal funds entrusted to them, and in the process, are actually ROBBING Tribal members of an equal share of Tribal funds and resources. These people are notoriously and incurably corrupt. The alleged governing body of the Tribe is infested with favoritism, graft, and crookedness. In using such methods, the Tribal officers can and will aquire large amounts of money and assets, while Tribal members entitled to share in the resources are receiving little or no benefits at all.

With the passage of the enabling Act in 1980 (Pub. L. 96-251), and then "Recognition Act" in 1982 (Pub L. 97-391), the Cow Creeks Tribal members became faced with one of the oldest problems known to man. That problem-"Power Corrupts"!

All of the fairness and equality has gone out of how the Cow Creek people are being treated, and while a few people in positions of power, have taken complete and total control of The Cow Creek Tribe, and its funding sources, the

majority of the Tribal members have no more now than they did before the Court of Claims judgment award or before the Federal Recognition Act was enacted.

I personally feel that the only FAIR and EQUITIBLE plan for the judgment award funds distribution, is with a per capita payment to EVERYONE who meets the eligibility requirements for inclusion on a distribution roll, pursuant to Pub. L. 96-251. The law which allowed the litigation, FOR WHICH THE COW CREEK JUDGMENT WAS AWARDED, or by incorporating the amendments submitted previously to this Committee by me, for and on behalf of the Cow Creek Interim Committee, of which I am a duly elected member. H.R.3214 would actually change the original intent and scope of the Cow Creek Enabling Act(Pub. L. 96-251).

I offer the following observations regarding the written testimony submitted by Sue Shaffer and Stephen Beckham at the Congressional Committee hearings regarding H.R. 3214, on December 10, 1985.

Many of the statements made by Shaffer and Beckham contained gross distortions of the facts and in fact are FRAUDULENT, OBTRUSIVE LIES!! I must admit that Shaffer, Beckham, and the alleged Cow Creek Tribal Attorney, Dennis J. Whittlesey, are all highly skilled, well educated, highly motivated, well compensated, and experienced, convincing speakers.

By inserting;(seemingly unimportant at the time) a questionable error, a small deletions here, over simplification there, a slight emphisis which implies highly documented facts, when in truth, there is no evidence or documentation whatsoever, anywhere, that would confirm any honesty and or credibility in the statements that they make. They make everything sound perfect. Yes, They are experts in the art of persuasion. I do not intend to analyze all of the testimony given by these people, but I do feel it is necessary to clarify my allegations.

In Shaffer's testimony, page 4, the 3rd paragraph, there is a perfect example of the slightly hidden, yet unbelievable arrogance as well as a gross insult being offered to this Committee. For example:

Ms. Shaffer's discussion of the plan, with members of the Tribe; of whom most were those she had recruited in the first place to pass the highly controversial, unconstitutional Tribal Distribution Plan. She, and members of the Distribution Committee made promises of a one time payment of $5000. Has Shaffer provided any documented support to her statement of the overwhelming sentiment of the tribal membership? These people have intimidated, and often threatened members with non-eligibility to share in a Per Capita distribution

plan! I was informed that Steve Beckham and Dennis Whittlesey made that very threat to Amaryllis Young and Janey Heussner, in the hallway, just before the hearings began on December 10!

Ms. Shaffers belief that the dissatisfaction with the plan is very low and that the descenting views represented at the hearings was just the voice of a tiny minority were being expressed for other reasons is just one more attempt to cloud the real issues with her highly skilled and minipulated word play. PLEASE consider the following facts:

1. Each of the descenting witnesses represented one of the six different original Cow Creek Descendent Families.

2. Most of the opposing witnesses provided documentation in the form of letters, affidavits, and/or petitions requesting the defeat of H.R. 3214.

3. 5 of the 6 original Descendent Families opposing H.R. 3214 constitute possibly 80-90 per cent of the Cow Creek Tribe.

4. The only people testifying in support of H.R. 3214, are the people who formulated and requested the introduction of this legislation.

5. Only those people who stand to gain financially (expert witnesses, enrollment coordinator, attorney, elders), and politically (Tribal Chairperson, non Cow Creek Indians, politicians, Tribal employees), appear to support this legislation.

6. This legislation is not just a Distribution Plan. The distribution section of this legislation is just a smokescreen to hide the real purpose of this legislation. It is an attempt to legislatively guarantee Tribal enrollment for non-Cow Creek persons who are now, although they are not entitled to be, enrolled as eligible members of the Cow Creek Band of The Umpqua Tribe of Indians. (this would be accomplished by using a list of names that are only referenced to exist as the elusive and unavailable, Interrogatory #14).

7. None of the people expressing descenting views (to my recollection), were opposed to a FAIR Tribal Distribution Plan. We do not feel H.R.3214 is a workable plan.

BOTH Beckham & Shaffer made reference to other Indian Tribes and other Indians who have received judgment award funds and literally squandered away their portion or Per Capita shares. Are they stating that Indians cannot manage their own assets? They neglected to explain that the Indians who wasted, lost, squandered, or just gave their money away were Indians who had been living

under the supervision of the Federal Government until the time that termination was forced upon them. I have to totally agree that those particular Indians had no Idea of the value of money. The Government had always provided for them before and they (Indian people) truly believed that the Government would take care of them again. It was not the money that they needed to understand, it was TERMINATION! I cannot understand how these witnesses can and, in fact, have taken it upon themselves to make the Cow Creek Tribal members decisions for them, especially concerning an individuals personal rights or property, totally without any input from the individual. Have these people become Gods? The distribution situation only substantiates the old policy that resources, in whatever form, are more important than HUMAN RIGHTS! H.R.3214 falls considerably short of solving the Cow Creek distribution problem; in fact, it creates more problems than it professes to solve. Issues of serious concern remain unanswered and are not addressed by H.R.3214.

Beckham stated on page 5, last paragraph; "On July 19, 1847, Nonta, first married to Charlotte Wolalala, married a second time to her sister-- Catherine Ampkwa [Umpqua]."

The Catholic Church Records of the Pacific Northwest, Vancouver, volumes I & II, Stellamaris Mission; state the following ver batim:"Algonquin, Nonta, Louis and Others-Louis Nonta was an algonquin Indian whose wife in 1838 was given as Charlotte, Walla Walla. In 1847 a man of similar name, Louis Nota was the widower of Susanne Kwakwiltosian when he married an un-named Ampqua(Umpqua).
In 1849 Louis Norta was the father of a daughter Josephte, whose mother was Catherine. Earlier, John Work recorded he had left "the boy norty" back from the Rocky Mountain trip because of illness.
It is possible these items all refer to the same Algonquin engag'e."

FACTS TO CONSIDER:

1. Charlotte was listed as Walla Walla; not Wolalala. (This was a interpretation mistake claimed by the Thomason Family members which they claimed was made by the Priest when the information was recorded or translated. The Thomasons had been rejected for payment under the Western Oregon Judgement Funds Act of August 13, 1954. This claim was made under appeal and they were again denied eligibility to share in the Award.

2. Where is the documentation that will support the fact that Charlotte and Catherine were sisters.

3. Susan Nonta had a brother named Louis. What happened to Him?

4. There are records available which state that Susan Nonta's mother was born in British Columbia.

5. Various Government enumeration documents and Census Record list Susan Nonta and her descendents as Spokane Indians.

6. Ellen "Nellie" Crispen (Sue Shaffer's Mother) claimed to belong to one of the five civilized Tribes of Oklahoma.

7. Naomi Rainville Gould, in her role of Enrollment Secretary in 1983, working under the direction of Stephen Beckham, recorded and compiled the Thomason family history and she has stated to me on numerous occassion that she has never seen any evidence or documentation that supports Beckham's statements. I personally believe that Sue Shaffer fabricated this story and much of the rest of the Thomason Family history because she wants very desperately to belong to an Indian tribe in Oregon.

There is no relationship to the truth in Beckham's statements regarding the descendancy of the Thomason Family members, and indeed a brazen falsification has taken place. The man has lied!

Beckham's errors of ethnohistorical facts reinforce the problems of tribal membership and evades a fact of major significance; that of the eligibility for membership requirements criteria!

Politics deal an arrogant abuse of power, one to which Sue Shaffer, Steve Beckham, Dennis Whittlesey, and a few others have become solidly attached.

IN CONCLUSION

Not since Andrew Jackson and his policy of forced removal has there been an attempt at the gross oppression of the Indian peoples wants and desires. The awesome power of the Federal Government to control the Native American People must not allow for an arrogant abuse of that power, as is exhibited in the introduction of H.R.3214. H.R. 3214 constitutes a trampling of a tribes exclusive right to determine its own membership and a thumbing of its nose at the expressed desires of the majority of the Cow Creek people. This action could mean the end of all hope for a viable future for the Cow Creek Tribe.

Many facts have been ignored and misrepresented, policy and procedures have gone by the wayside, and these things have caused many Cow Creek Tribal members to be deprived of, or to be more realistic, has led most of the tribal members to give up their rights to vote, because of past fraudulent practices of the existing Tribal Administration and their alleged Legal Counsel. In the

formulation and request for introduction of H.R. 3214, the fraudulent practices of the present governing body of the Cow Creek Tribe support a vicious denial of equal protection of the law provided for in the United States Constitution and the Indian Civil Rights Act of 1968. Passage of H.R.3214 would not only expand and condone these practices, but would legalize their continuance by Federal Statute.

The present Tribal system of government is deficient in its abilities to protect the rights and property of the Cow Creek membership, and the United States Government should assist them in carrying out their responsibilities in a fair and reasonable manner. The first step to this assistance would be the defeat of H.R.3214, with full recommendation of the alternative legislation proposed by the Cow Creek Interim Committee and presented to this Committee for their consideration and incorporation into H.R. 3214.

Even with the passage of the amended H.R. 3214 as proposed by the Interim Committee the path ahead for the Cow Creek Tribe could be a difficult one. With the past fraud and deceit some Issues will undoubtedly emerge for which fully acceptable solutions will take a great deal of work and time but at least H.R. 3214 amended as requested, they could acomplished and reached.

This may be the final hope for the Cow Creek Tribe to salvage its existance and go on from here as an organizational and political unity. They will need to reunite their membership, exchange information with those organizations and persons who truly want to help them rather that exploit them, and aid one another in changing the present conditions among the Cow Creek Tribal people. There is no other answer that can assure proper self government, independance of economic progress, and true Tribal sovereignty. The critical importance and the strategic emphisis that must be placed upon what happens in this tribe cannot be over-emphisized.

The Cow Creek Tribal members are strong enough, wise enough, and dedicated enough to do what must be done in order to show and maintainunity among the Cow Creek people.

In closing, I say to this Committee; you have a duty to fulfill the Constitutional mandate of Pub.L. 96-251; and to uphold the purpose and scope of that law. That can be acomplished by amending H.R. 3214 to remain consistent with Pub. L 96-251.

Issues of serious concern remain unanswered and are not addressed if H.R. 3214 is not amended. The passage of this legislation without amendment could

lead to serious legal questions and conflicts which could keep the distribution question in the courts for many years just looking for answers.

H.R. 3214 as submitted to this Committee is a gross insult offered to the Cow Creek people with unbelievable arrogance.

I wish to thank this Respected Committee for having these very important hearings and for allowing me to submit my testimony.

Respectfully submitted

Robert L. Buschmann

ADDITIONAL TESTIMONY OF ROBERT L. HUSCHMANN, COW CREEK UMPQUA LINEAL DESCENDANT OF THE ORIGINAL COW CREEK INDIAN TRIBE, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE, ON H.R. 3214, A BILL "TO PROVIDE FOR THE USE AND DISTRIBUTION OF FUNDS AWARDED TO THE COW CREEK BAND OF UMPQUA INDIANS IN UNITED STATES CLAIMS COURT DOCKET NUMBERED 53-81L, AND FOR OTHER PURPOSES."

August 14, 1986

Mr. Chairman and Members of the Committee, I appreciate the opportunity to provide additional written testimony on H.R. 3214.

I have had the chance to review the testimony of the proponents of H.R. 3214 and feel a responsibility to the members of the Cow Creek Tribe to respond to the statements of those people.

CONGRESSMAN JIM WEAVER

I, and many of the Tribal descendants that I represent, do not oppose the concept of the judgment fund award being set aside and using ONLY the interest earned for Tribal programs. WE STRONGLY OPPOSE the specific programs proposed by the Tribal Judgment Fund Committee and the methods used in the formulation of their distribution plan.

We do agree with Congressman Weaver's statement that the judgment fund should be utilized in a way that benefits the tribe as a whole, but further clarify that the TRIBE consist of ONLY those persons as defined in Pub. L. 96-251 and as indicated in the legislative history of that law.

Congressman Weaver speaks out strongly against a <u>per capita</u> distribution on one hand, yet turns 180 degrees to support a one time per capita payment to those tribal members over the age of fifty years on a specified date. As stated previously, we feel that this portion of the plan is highly discriminatory.

The original definition of terms used in H.R. 3214 and the amendments to them offered by Mr. Weaver at the March 19, 1986 mark-up, in the House Interior Committee DO NOT address the concerns of the hearings witnesses. The amendments only tend to confuse the proposed legislation more than it was to begin with. H.R. 3214 should be required to be totally consistant with Pub. L. 96-251.

The term defining "tribe's governing body", and the first offered amendment is unnecessary because Pub. L. 96-251, SEC. 4.(b) defines the governing body of the Tribe as follows; SEC. 4.(b) "In any proceeding under this Act, the Council of the Cow Creek Band of the Umpqua Tribe of Indians....shall be considered to be the governing body of such band."

Mr. Weaver's second amendment is also unnecessary because the Tribal membership criteria is clearly defined in Pub. L. 96-251, SEC. 4.(a) "For purposes of this Act, the term "Cow Creek Band of the Umpqua Tribe of Indians" means the group of person descended from persons considered members of such band dor purposes of the treaty entered into between such band and the United States on September 19, 1853 (10 Stat. 1027)....."

The third amendment offered by Mr. Weaver is moot if the terms used to define tribal membership in the present governing documents of the Cow Creek Tribe (September 10, 1978 Bylaws of the Cow Creek Tribe, determined so in the opinion entered in the United States District Court for the District of Oregon, Robert L. Buschmann, et al. v. Cow Creek Band of Umpqua Tribe of Indians, Inc., et al., Civil No. 85-6137E), and Pub. L. 96-251. If the above referenced definitions are adhered to, there would be no non-tribal descendant members of the Cow Creek Tribe.

Redefining the governing body of the tribe and the criteria of Tribal membership in H.R. 3214 from that of the Tribal Bylaws and 96-251 is totally without merit, it is a contradiction to, and in total defiance to the scope and purpose of Pub. L. 96-251!!

DENNIS J. WHITTLESEY

Many of the statements of Mr. Whittlesey in his submitted written testimony are in the least, questionable. I will address only the issues that pertain to H.R. 3214.

The first issue Mr. Whittlesey addresses is the Department of the Interior concerns. In reviewing the statements of B.I.A., Department of the Interior Representatives, Mr G. Ronald Peake (Dec. 10, 1985 House Committee Hearings on H.R. 3214), and Hazel Elbert (Aug. 6, 1986 Senate Select Committee hearings on H.R. 3214), I find Interior's concerns to be basically the same as all of the other opponents to H.R. 3214, which are:

(1) The circumventing of previous Acts of Congress.

(2) Legislating Cow Creek Tribal Membership of persons who are not descendants of the Cow Creek Indians as defined in Pub. L. 95-251.

(3) Excluding and/or limiting benefits to some who should benefit.

(4) Locks funds into specific programs that would require additional legislation to change.

(5) Providing compensation to individuals who are not descendants of

the Cow Creek Band of 1853 and excluding individuals who are.

The second issue Mr. Whittlesey addresses should raise questions of Whittlesey's credibility as a witness. The issue: Robert L. Buschmann, et al. v. Cow Creek Band of Umpqua Tribe of Indians, Inc., et al., Civil No. 85-6137E. Mr. Whittlesey states in his Senate Testimony that the tribe was not a party to this litigation, yet Whittlesey's petition for removal to Federal Court and the Pre-Trial Order claimed the litigation raised questions under Federal Law concerning the membership roll of a federally recognized tribe and that; "Removing defendants contend that this litigation is directed toward the Cow Creek Band of Umpqua Tribe of Indians, which was federally recognized by the Recognition Act of December 29, 1982, Pub. L. 97-391, 25 U.S.C. §712, et seq. [see exhibit "A", pg. 3] and "F. That plaintiffs action should be dismissed because it seeks relief against a federally recognized Indian Tribe which enjoys sovereign imunity from suit by these plaintiffs." [exhibit "A", pg. 18). I ask you; is this witness LYING to you or did he lie to the Court??

It appears that Mr. Whittlesey has attempted to use the Court Opinion to further cloud the issue of a Tribal roll existing of the Cow Creek Indian Tribe. The Opinion clearly states that the roll referred to as the "Official Roll" is "a corporate roll, not a roll of the recognized tribe." (see Opinion, page 31, line 10). The Opinion further states that; "The corporation did not properly adopt the 1981 bylaws....", therefore the September 10, 1978 bylaws are still the governing documents of the tribe until such time that the Tribal Council prepare, approve and adopt a constitution and bylaws, to govern the affairs of the tribe when acting in its governmental capacity, pursuant to 25 U.S.C. §712b. (Pub. L. 97-391, §4, Dec. 29, 1982, 96 Stat. 1961.).

A Tribal Roll and a corporate membership roll were prepared under the supervision of the Board of Directors in accordance with the 1978 Bylaws. The Tribal Roll was submitted to the Department of the Interior, Bureau of Indian Affairs and is referred to in the written statement (page 3) of G. Ronald Peake, Acting Director of Indian Services, presented at the House Subcommittee Hearings on H.R. 3214, December 10, 1985. Altho that roll was not explicitly described in the legislative history of Pub. L. 97-391;it was explicitly described, defined and referred to in the legislative history of Pub. L. 96-251 (JOINT HEARINGS before the SELECT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE and the COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES report dated June 14, 1979.). This Tribal Roll was in effect on December 29, 1982, when the "Cow Creek Umpqua Indians Recognition Act" was signed into law.

Mr. Whittlesey does not want this Tribal Roll accepted as the roll in effect when the "Cow Creek Recognition Act" was passed because it deletes and removes those persons (his clients) who are not descendants of the original Cow Creek Band (descendants of Susan "Nonta" Thomason).

Whittlesey's final issue of concern is the statements I previously submitted to this Committee opposing H.R. 3214 on August 6, 1986. He (Whittlesey) brings to mind; the religious fanatic who uses only a small part of the total picture to support his arguments. When the total picture is revealed, it tends to change dramatically. This is extremely obvious when he states: "Not only are his statements proven false, but were submitted in direct violation of the Court injunction barring him from making them in the future." FACT: The Courts Opinion states on page 29, lines 23-26; "In Oregon, a libel defendant must prove the truth of the statements....Bob Buschmann failed to carry this burden because he did not submit any evidence about the truth of the statements [this does not even imply that my statements were proven false] FACT: The Courts Opinion and injunction is effective only...."if he cannot prove those statements."[The next portion of this additional testimony will support the TRUTH of my statements!

STEPHEN DOW BECKHAM & SUE M. SHAFFER

To prevent repeating in detail my previous testimony, I refer you to page 5 of Beckham's testimony, 11th line from the top, beginning with: "On July 19, 1847, Nonta, first married to Charlotte Molalala,...."

(1) The record (see exhibit "B" HILITES) speaks for itself. NOWHERE is there any evidence whatsoever stating any reference to Charlotte Molalala! Nonta was married to Charlotte, Walla Walla by nation...." The term "Molalala" is a figment of the imagination of Sue M. Shaffer, devised as a means to support her claim to Umpqua descendancy. First, in the appeal to the Secretary of the Interior after being rejected as a beneficiary of the WESTERN OREGON JUDGMENT FUND DISTRIBUTION and now in her attempt to claim Cow Creek descendancy.

(2) Beckham's claim that Nonta married a sister of Charlotte Walla Walla is ludicrous. Again, there is no supporting evidence of this claim. The Church records relied on by Beckham and Shaffer actually discredit the proof of their claim. Charlotte Walla Walla was 36 years old when she was buried at the St. Paul cemetary on sept 12, 1846. If the unnamed Ampkwa was Charlotte's sister as claimed she would have been 25-26 years younger than Charlotte. Conservatively speaking, if Charlotte's Mother was 14 years old when Charlotte was born; she would have been approximately 40 years old when the unnamed Ampkwa was born. Was the Father of Charlotte also the father of her undocumented sister? There is no supporting documents that indicate, even remotely, that the Louis "NOTA" was the same person who was married to Charlotte. The person who was married to Charlotte Walla Walla was from near Ottawa, Canada, while the person who married the unnamed Ampkwa, was from the village of Two Mountains, Canada. NOTE: ALL OF THE NAMES WHICH ARE ITALICIZED AND IN BRACKETS IN EXHIBIT "B" HAVE BEEN PROVIDED BY DESCENDANTS (Sue Shaffer), RESEARCHERS, AND THE COMPILERS OF THE PUBLICATION! i.e. [Catherine Umpqua], [Catherine], & [Nouta].

CONCLUSION

I want to again express my deepest appreciation for the opportunity I have been given by this Committee to voice my concerns regarding H.R. 3214 and to be a part of this legislative process. I feel secure in knowing that the amendments submitted by the Cow Creek Interim Committee for incorporation into the proposed legislation will be given every possible consideration and that the final amended legislation will contain fairness and equality for ALL eligible Cow Creek Tribal descendants.

THANK YOU

Robert L. Buschmann
8504 North Foss Avenue
Portland, Oregon 97203
(503) 289-7056

In addition, the Counterclaim alleges conspiracy to commit libel as to plaintiffs RONALD E. BUSCHMANN and JAMES W. BUSCHMANN, and seeks money damages from them.

2. Subject Matter Jurisdiction.

This action was removed from Circuit Court for Douglas County, Oregon, by the named defendants. Removing defendants claimed jurisdictional basis for removal is that the Complaint raises questions under federal law concerning the following:

-- whether the membership roll of a federally recognized tribe, which roll is specifically referenced at 25 U.S.C. §712c, should be replaced by some other membership roll, and

-- whether well-established federal law concerning the role of Indian tribes and the Secretary of the Interior in determining membership in federally recognized Indian tribes should be ignored in this case.

Removing defendants contend that this litigation is directed toward the Cow Creek Band of Umpqua Tribe of Indians, which was federally recognized by the Recognition Act of December 29, 1982, P. L. 97-391, 25 U.S.C. §712, et seq.

Removing defendants contend that in order for this Court to award the relief sought by the plaintiffs, it would have to void 25 U.S.C. §712c insofar as that section (a) refers to the tribal membership roll in effect at the date of the law's enactment and (b) adopts that roll as the standard for membership in the Cow Creek Band of Umpqua Tribe of Indians.

3. Agreed Facts as to Which Relevance Is Not Disputed.

1. On September 10, 1978, the Board of Directors of the Tribe adopted Bylaws.

2. Defendant SHAFFER's motion of April 13, 1980, was seconded and passed by defendants SHAFFER, JACKSON, ELLIS BUSCHMANN, GOULD, MICHAELS, RALPH YOUNG, JOHN YOUNG, AMARYLLIS YOUNG and HOWREN.

3. In 1977-1979, principal legal counsel to the Tribe was Robert Thomas.

4. ROBERT L. BUSCHMANN authors and publishes a periodic newsletter which is mailed through the United States Postal Service to, inter alia, members of the Tribe.

5. In late September or early October 1984, ROBERT L. BUSCHMANN wrote, published and distributed by mail to hundreds of people, including members of the Tribe, an undated newsletter in which he stated in writing that

rendered were volunteered and were services for which no compensation concededly would be sought.

E. That any action arising out of services rendered in 1977-79 is barred by the statutes of limitations found at ORS §12.110(1) or ORS §12.080(4).

F. That plaintiffs' action should be dismissed because it seeks relief against a federally recognized Indian Tribe which enjoys sovereign immunity from suit by these plaintiffs.

G. That plaintiffs' action should be dismissed because it fails to state a claim upon which relief can be granted.

H. That plaintiffs' action should be dismissed because plaintiffs' claims are barred by laches.

I. That all equitable relief sought by plaintiffs should be denied because plaintiffs have engaged in inequitable conduct as a result of which they have unclean hands.

J. That plaintiffs' claims constitute frivolous and vexatious litigation.

K. That plaintiff ROBERT L. BUSCHMANN has libelled certain of the defendants through the writing, publishing and distribution of materials which are libel per se under Oregon law.

EXHIBIT B

45th & 46th pgs

B 170 David Deschamps — This 29 June, 1839, we priest undersigned have baptized David, born this day, natural child of Antoine Deschamps métis, and of Marie Anne, Nez-percés by nation, both infidels. Godfather David Dompierre undersigned.
David Donpier
F. N. Blanchet, priest

B 171 Jean Arcouet — The 11 June, 1839, we priest undersigned have baptized at Wallamette, Jean, born the same day, of the legitimate marriage of Amable Arcouet, farmer of that place, and of Marguerite Tchinouk. Godfather Hyacinthe Lavigneur, who as well as the father has not known how to sign.
F. N. Blanchet, priest, V.g.

FORTY-SIXTH PAGE M.D. priest

B 172 Louise Tawakon — This 4 July, 1839, we priest undersigned have baptized Louise, aged 2 years, natural daughter of Thomas Tawakon, Iroquois, engagé, and of Françoise, WallaWalla by nation. Godmother Catherine Russie who has not known how to sign.
F. N. Blanchet, priest, V.g.

B 173 Pierre Tawakon — This 4 July, 1839, we priest undersigned have baptized Pierre, aged 3 years, natural child of Thomas Tawakon, Iroquois, engagé, and of Françoise Tawakon *[WallaWalla]*. Godfather Paul Guilbault who has not known how to sign.
F. N. Blanchet, priest, V.g.

B 174 Louis Nonta *[Nouta?]* — This 4 July, 1839, we priest undersigned have baptized Louis, aged 3 years and a half, natural child of Nonta, Algonkin, engagé, and of Charlotte, WallaWalla by nation. Godfather Lachapelle who has not known how to sign.
F. N. Blanchet, priest, V.g.

B 175 Susanne Nonta — This 4 July, 1839, we priest undersigned have baptized Susanne, aged 6 months, natural child of Nonta, Algonkin, engagé, and of Charlotte, WallaWalla by nation. Godmother Catherine Russie who has not known how to sign.
F. N. Blanchet, priest, V.g.

B 176 Me. Anne Louis le frisé — This 4 July, 1839, we priest undersigned have baptized Marie Anne, aged 5 years, natural child of Louis, Iroquois, nicknamed le Frisé, engagé, and of Louise, Kalapoya by nation. Godmother Catherine Russie who has not known how to sign.
F. N. Blanchet, priest, V.g.

B 177 Michel Louis le frisé — This 4 July, 1839, we priest undersigned have baptized Michel, aged 3 years, natural child of Louis, Iroquois, dit le frisé, engagé, and of Louise, Kalapouya by nation. Godfather Paul Guilbault who has not known how to sign.
F. N. Blanchet, priest, V.g.

B 178 Catherine Monique — This 4 July, 1839, we priest undersigned have baptized Catherine, aged 1 year, natural child of Louis Monique, Iroquois, engagé, and of Charlotte, Tchinouk by nation. Godmother Catherine Russie who has not known how to sign.
F. N. Blanchet, priest, V.g.

B 179 Marie Monique — This 4 July, 1839, we priest undersigned have baptized Marie aged 3 years and a half natural child of Louis Monique, Iroquois, engagé, and of Charlotte, Tchinouk by nation. Godmother Catherine Russie who has not known how to sign.
F. N. Blanchet, priest, V.g.

B 180 Me. Anne Tchinouk — This 7 July, 1839, we priest undersigned have baptized Marie Anne, aged 25 years, born of infidel parents, Tchinouk by nation. Godmother Catherine Russie who has not known how to sign.
F. N. Blanchet, priest, V.g.

B 181 Françoise WallaWalla — This 7 July, 1839, we priest undersigned have baptized Françoise, aged 25 years, born of infidel parents, WallaWalla by nation. Godmother Catherine Russie who has not known how to sign.
F. N. Blanchet, priest, V.g.

155th, 156th, & 157th pgs

and of Michel Laferte, who as well as the said spouses could not sign.
[No signature of priest]

M-6
J. B.
Soletroani
and
Marie
Pendoreil

The 21 June, 1847, after the publication of three bans of marriage between Jean Baptiste, of-age son of the late Ignace, Iroquois, and of a Flat Head woman, on the one part, and Marie, widow of the late Jean Baptiste Lajoie, Pendoreil, on the one part (sic), nor having discovered any impediment, we the undersigned priest have received their mutual consent to marriage and have given them the nuptial benediction in the presence of Paul Guilbeau and of Michel Laferte who as well as the spouses could not sign.
Mod. Demers, priest

p 156

S-19
Isabelle
Mainville

The 5 July, 1847, we the undersigned priest have buried in the cemetery the body of Isabelle, deceased yesterday, wife in her lifetime of Jean Boucher, aged about 25 years; present Amable Petit and Francois Boucher who could not sign.
Mod. Demers, priest

B-27
F. Xavier
Liard

The 10 July, 1847, we the undersigned priest have baptized Francois Xavier, born the 5 of May last, illegitimate child of Stanislaus Liard and of an Okanagan woman. Godfather Francois Liard, godmother Marie Anne, his wife who could not sign.
Mod. Demers, priest

B-28
[Catherine
Umpqua]

The 19 of July, 1847, we the undersigned priest have baptized *[Catherine]* Ampkwa *[Umpqua]* aged about 15 years; godfather Laurent, Iroquois, godmother Therese, his wife who could not sign.
Mod. Demers, priest

M-7
Nota
and
[Catherine]
Ampkwa

The 19 July, 1847, after the publication of 1 ban of marriage and the dispensation of 2 others granted by us, between Louis Nota, formerly of the village called Two Mountains in Canada, widower of the late Kwakweltosion, Susanne, on the one part, and . . . Ampkwa, nor having discovered any impediment, we the undersigned priest have received their mutual consent to marriage and have given them the nuptial benediction in the presence of Laurent, Iroquois, and of Sigfroid Jobin who as well as the said spouses could not sign.
Mod. Demers, priest

S-20
Josephte
Humpherville

The 22 July, 1847, we the undersigned priest have buried in the cemetery the body of Josephte, deceased 2 days ago, aged 10 years, daughter of the late Canote and of Marie Sanpoil; present Pierre Dubois and Amable Petit who could not sign.
Mod. Demers, priest

EIGHTIETH PAGE

p 157

B-29
Pierre
Indian

The 25 July, 1847, we the undersigned priest have baptized Pierre, aged 10 days, child of infidel Kalapoyas. Godfather Louis Forcier, godmother, wife of Caille, who could not sign.
Mod. Demers, priest

B-30
M. Magdelen
Fistgerald
[Fitzgerald]

The 1 August, 1847, we the undersigned priest have baptized Mary Magdelen, born the 30 January last, legitimate daughter of Thomas Fistgerald and of Eldridge Pamilea *[should be reversed]*; godfather Pierre Haquet, godmother his wife who could not sign.
Mod. Demers, priest

S-21
Louise
Nez percez

The 1 August, 1847, we the undersigned priest have buried in the cemetery the body of Louise, Nez Percez, aged 23 years, wife in her lifetime of Louis Nipissing; present Augustin Rochon and Amable Petie, who could not sign.
Mod. Demers, priest

S-22
Louis
Nipissing

The 5 August, 1847, we the undersigned priest have buried in the cemetery the body of Louis, aged 18 months, died yesterday, son of Louis Nipissing and the late Louise Nezpercez; in the presence of Amable Petie and of Charles Petie who could not sign.
Mod. Demers, priest

A-1

Accolti, Michael 1807-1878
Father Accolti was an Italian Jesuit who came to Oregon with a group of brother priests and Sisters of Notre Dame du Namur on the ship *l'Infatigable* in 1844. He established a land claim for the Church to the west of St. Paul. A genial, out-going man, he found himself better fitted to work among the whites or in the academic field than among the natives. After some time at St. Paul and Oregon City, he went to California in 1850.

Algonquin Tribe
The Algonquin linguistic group covered a great deal of northern and central North America, many tribes of very different characteristics sharing the same basic language. The tribe known as Algonquin lived near the mouth of the Ottawa River and was the implacable enemy of the Iroquois, whose main center was in New York State. Both tribes were fierce and cruel foes. In view of the great number of Iroquois recruited as boatmen for the fur trade the presence of an Algonquin mixed-blood is a rarity in the West.

Algonquin, Nonta, Louis and Others
Louis Nonta was an Algonquin Indian whose wife in 1838 was given as Charlotte, Walla Walla. In 1847 a man of similar name, Louis Nota was the widower of Susanne Kwakweltosian when he married an un-named Ampqua (Umpqua).
In 1849 Louis Norta was the father of a daughter Josephte, whose mother was Catherine. Earlier, John Work recorded he had left "the boy Norty" back from the Rocky Mountain trip because of illness.
It is possible these items all refer to the same Algonquin engagé.

Allan, George T. 1810 c.-1892
Allan was a well-known clerk and storekeeper who came to Oregon in 1831 in the service of the Hudson's Bay Company. He was at one time stationed in Hawaii. From 1851 to 1861 he kept a store in Scottsburg, later establishing himself in Oregon City. He was an affable, intelligent man "with a face like a coon", who left several well-written accounts of his travels about Oregon and Canada in early times. In old age he lived near one of the Birnie sons at Cathlamet, withered and spry, and was written up in a newspaper in 1888 as "the oldest but one of settlers now living in Oregon, Gagnier (of Siuslaw) having come one year earlier". Although not Catholic, he signed as witness at the marriages of various Company men at Fort Vancouver.

Allard, Ovid
One Ovid Allard was an engagé stationed in British Columbia with a Cowitchan wife. His son Jason, born at Fort Langley, became a capable clerk at Fort Shepherd and left a good account of life in the fur trade during his time. Whether the Ovid Allard who "did not know how to sign" as a witness at Fort Vancouver is related to the first is not known; a Magloire Allard from Lower Canada appears in later records. The name Allard is widely dispersed in the Oregon country - in Eugene, on the Umpqua, and in Walla Walla.

André, Louis ("the late") 1792-before 1843
"Is listed on the books of the Hudson's Bay Company in London in 1830 as a middleman from Quebec, thirty-eight years of age, stationed at Fort Vancouver, and having been then ten years with the Company. McLoughlin in a letter in 1832 said that he was a freeman."
Baker: **Letters of Doctor John McLoughlin**

Anson, John
John Anson seems to have been an English employee of the Company, loaned to the missionaries as an interpreter. He accompanied Father De Vos on a mission to the mouth of the Columbia, on which expedition he was a witness to numerous rites. A son John was born to him and Hélène Chinook in 1836, after which the pair went separate ways, for when son John was baptized at St. Paul in 1840, Hélène was the wife of Ignace Iroquois.

Aplin, George Chiffman 1824-1889
Aplin came from Dorchester, England, and was for a time employed by the Hudson's Bay Company before taking up a claim at French Prairie. He married Marie Wagner, daughter of the Fort Vancouver butcher. Fourteen children were born to them but few descendants remain today. The Memorial Cabin at Champoeg Park is said to have been modelled after the Aplin home.

Arcouët, Amable (I) 1802-1880
Arcouët was born in Montréal; he entered the service of the Hudson's Bay Company as a middleman in 1823. He was one of the settlers who went to California for cattle in 1837 in order to break the Company's monopoly, and went again for three months during the gold rush. He took a claim north of Donald and became a naturalized citizen in 1851. While at work in blasting for a mill canal in Oregon City he was permanently blinded. Eight or nine children were born to

Kalapoya] under the name of Marie; in the presence of Amable Petit and of Michel Lucier who could not sign.

Mod. Demers, priest

M-23
P. Delard
and
Josephte
Lapierre

The 3 August, 1846, after the publication of 3 bans of marriage between Pierre, of-age son of Joseph Delard and of Susanne, Shushap, on the one part, and Josephte, minor daughter of Joseph Lapierre and Susanne Okanagan, on the other part, nor having discovered any impediment, we the undersigned priest have received their mutual consent to marriage and have given them the nuptial benediction in the presence of Louis Aussan and of Andre Lonetain who as well as the spouses could not sign.

Mod. Demers, priest

B-185
Angelique
Gobin

The 15 August, 1846, we the undersigned priest have baptized Angelique, born the 16 July last, legitimate daughter of Baptiste Gobin, and of Marguerite Vagnier; godfather Antoine Rivet, godmother Mary, his wife, who could not sign.

Mod. Demers, priest

[The above entry is a repeat of B-184 on page 140]

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B-186
Emilie
Saste

The 8 September, 1846, we the undersigned priest have baptized Emilie, Saste, aged about 15 years; godfather Joseph Cornoyer, godmother Therese his wife, who could not sign.

Mod. Demers, priest

S-76
*[Charlotte
Wallawalla]*

The 12 September, 1846, we the undersigned priest have buried in the cemetery the body of Charlotte Wallawalla, aged about 36 years, deceased yesterday, in the presence of Amable and of Pierre Bonin who could not sign.

Mod. Demers, priest

B-187
Thomas
Waticie

The 14 September, 1846, has been baptized by the Reverend Louis S.J. *[Vercruysse?]*, Thomas, natural son of . . . *[Watice]*, Iroquois and of a Tchinook Woman; godfather Adolphe Chamberland, godmother Julienne Watiece.

B-188
Marie
[Serpente]

In this manner Marie, Snake *[Serpente]* woman, aged about 30 years; same godfather and same godmother -

M-24
Thomas
Watiese
and
Marie
Serpente

Of whom, Thomas and Marie, the Reverend Father Louis S.J. considering dispensation of bans, has received the mutual consent to marriage and has given them the nuptial benediction in the presence of Adolphe Chamberland and of Joseph Plouff who could not sign. We undersigned certify the truth of this rite.

Mod. Demers, priest

M-25
Jean
Boucher
and
Isabelle
Mainville

The 7 September, 1846, after the publication of three bans of marriage between Jean, of-age son of Wakan Boucher and of Nancy McDougal, on the one part, and Isabelle, minor daughter of Francoise Mainville and of a Sauteuse woman, on the other part, nor having discovered any impediment, we the undersigned priest have received their mutual consent to marriage and have given them the nuptial benediction in the presence of Fabien Malouin and of Francois Boucher, who, as well as the said spouses could not sign.*

Mod. Demers, priest

* see October 8 *[?]*

SEVENTY THIRD PAGE

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B-189
Philomene
Tawakon

The 25 October, 1846, we the undersigned priest have baptized Philomene, aged 6 days, legitimate daughter of Thomas Tawakon and of Louise Wallawalla; godfather Augustin Rochon, godmother Celeste Jeaudoin who could not sign.

Mod. Demers, priest

B-190
Emilie

The 8 September, 1846, we the undersigned priest have baptized Emilie, aged about 15 years, Koos tribe; godfather Joseph Cornoyer, godmother

A-98

	1843		
Susanne Plante	Jan. 10	20 "	65
Agathe Indian, house of Plante	27	10 "	66
Alexis Indian	Feb. 23	-	69
Basile Picard	Mar. 30	11 "	70
James *(unknown)*	Apr. 10	2 "	70
Alexis Indian, house of Lucier	23	18 "	71
Baptiste Plante	May 25	16 "	73
Xavier Barnabe	June 2	3 mo.	73
Barthelimi Martineau	July 19	12 years	75
Amable Koose	20	20 "	75
Leon Arquaite	Oct. 3	-	79
Romain gagnon	14	1 mo	82
Marie Indian	18	20 years	82
Elizabeth Plante	23	14 "	83
Francois Tlakes	Nov. 11	15 days	84
Marie Indian, house of Despard	21	18 years	86
Frederic Indian, house of Perrault	Dec. 2	60 "	88
Unknown	4	-	88
Amable Indian	15	3 mo.	88
Ignace Indian, house of J. B. Aubichon	21	-	89
	1844		
Michel Indian	Jan. 16	10 years	90
Jacques Gagnon	Feb. 12	5 "	90
Marguerite Dubois	Mar. 13	-	91
Toussaint Racine	19	8 "	93
Josephine Ignace	26	4 mo.	93
Adele Rivet	Apr. 10	2 "	93
Child Indian	May 29	3 "	97
Joseph Indian	30	5 years	98
Child Indian	June 4	3 "	99
Helene Ignace	11	-	99
	1846		
Esther Lefebre	Jan. 13	-	Page 129
Child	Feb. 16	-	135
Child of Nashke	17	-	131
Joseph Indian	15	20 years	131
Little girl	24	-	131
Cecile Indian	Apr. 18	17 mo.	132
Henriette Yogalta	26	-	132
Susanne Humphreville Montour	May 20	55 years	133
Francois Chaudiere	24	-	133
Jacques Calapoya	19	18 years	133
Andre Picard	11	65	134
Son of Felix	June 3	1 "	136
Francois Felix	Jul. 22	9 "	138
Child of Senecal	Aug. 2	"	140
Jean Baptiste Lajoie	18	46 years	140
Thomas Waticie	20	-	140
Marie Kalapoya	30	-	141
Charlotte Walla Walla	Sep. 12	36 years	142
Rose Chalifoux	Oct. 12	12 "	143
Joseph Lilouais	Nov. 4	9 "	144
Hyacinthe Lavigueur	12	-	144
Marie Jobin	Dec. 2	3 years	145
Paul Garant	23	12 days	145
Marguerite Gingras	27	2 years	146
Child of Rivet	27	-	146
Joseph, at the College	Nov. 4	8 years	146

PREPARED STATEMENT OF RONALD E. BUSCHMANN

Members of the Committee: My name is Ronald Eugene Buschmann. I reside in North Highlands, California. My mailing address is P.O. Box 1351, North Highlands, CA 95660. Iam a member of the Cow Creek Band of the Umpqua Tribe of Indians and a direct lineal descendant of the Cow Creek Indians who lived in the lands described in the treaty of September 19, 1853, between the Cow Creek Band and the United States of America. I am grateful to be here today and I thank you for holding the hearings and allowing me this opportunity to testify on behalf of myself and many other Cow Creek Umpqua Indians.

I was elected to and served, as a member in good standing, on the Board of Directors of the Cow Creek Tribe, and the Cow Creek Corporation between 1977 thru 1979.[1]

I was appointed to serve on the Tribal Legal Committee at the regular Tribal Council meeting on November 13, 1977.[2] I faithfully served on the Tribal Legal Committee until September of 1979, at which time, the Committee was disbanded.[3] As a active Tribal member and Legal Committee Representative, during this time, I was completely involved in many phases and issues of the Cow Creek Tribes plans for legislative introduction-especially P.L. 96-251, The Cow Creek enabling Act, which became law on May 26th, 1980.

During 1978 & 1979, I assisted Sylvia Buschmann, the duly elected Tribal Enrollment Secretary, and her husband Bob, prepare the official Cow Creek Tribal Membership Roll, as provided for in the Bylaws of the Cow Creek Tribe and the Tribal corporation.[4]

As a Legal Committee Representative, I attended many meetings at the office of the then Tribal Attorney, Robert Thomas in Klamath Falls, Oregon. I assisted Bob Buschmann, the Tribal historical and Legal Researcher, with much of the compilation of the enormous amounts of documentation he had obtained, purchased and/or otherwise gathered for the preparation of the Cow Creek Enabling legislation; P.L. 96-251.[5] The U.S. Claims Court Case, Docket number 53-81L, which ultimately resulted in a Judgment Award for the Cow Creek Indians. I was personally involved with the enabling legislation from its initial concept thru to its introduction in both houses of Congress.

I appear before you today by the grace of God and through a deeply appreciated, unselfish, generosity of friends and family members who have sacrificed and donated many of their hard-earned and needed dollars that allowed me to be here today. We all have deep concerns regarding H.R. 3214.

Members of the Cow Creek Band of the Umpqua Tribe of Indians have suffered many injustices and have received inexcusable treatment during the last 130 or 40 years; not only at the hands of the government of the United States, citizens of this country, and even more recently, by other Indian people of other tribes who claim to be Cow Creek Descendants. It appears now that these 3 groups have joined forces to take away the last ray of hope that many Cow Creek Indian people have left. I can only hope that my faith and confidence in the American system of justice can be proven by the outcome of these hearings today.

I, and the Tribal members that I represent here today, consist of at least 40% of the currently enrolled Cow Creek Tribal members as well as many of the unenrolled Cow Creek Descendants. We are quite deeply concerned with and STRONGLY OPPOSE the passage of H.R. 3214, known as the "Cow Creek Band of Umpqua Indians Distribution of Judgment Funds Act". I have brought with me and wish to submit with my written testimony, and request that they be made a part of the hearings record, numerous letters and petitions OPPOSING H.R. 3214. This legislation was formulated and introduced on behalf of a very small portion and/or percentage of the Cow Creek Band of the Umpqua Tribe of Indians. After questioning many Tribal members I found that the majority of the Cow Creek Tribal members were not aware of and had absolutely no knowledge whatsoever that the legislation was being contemplated, let alone know that it had been introduced in Congress. Many Tribal members are not aware of the existence of the bill; even today. I am sure that the small group of persons who formulated and proposed H.R. 3214, convinced Congressman Weaver that its introduction was the wish of the entire Cow Creek Tribe. Knowing how these people have operated in the past, I do not personally find it difficult to believe that they would do anything that is not entirely honest and above board. These few people are extremely desperate, they have been backed into a corner, and will do anything to prevent certain damaging facts from being disclosed.[6] The exposure of these people has to be accomplished. We have to expose the false claims and lies they have very carefully established and fabricated over the past several years. We can show (and PROVE) how they were able to accomplish these things

at the expense of many good and honest people. Its unfortunate for some of the people who have been deceived in the past and now some of them may lose what they have always believed and felt they are entitled to. But, RIGHT IS RIGHT, and We, as law abiding citizens, and you, as our legislators and as representatives of the people, cannot and should not bend the rules or change EXISTING LAW to cover up what a few people have done and will continue to do if this kind of legislation is passed.

I do not expect you to accept my claims without your conducting a complete and thorough investigation of ALL of the facts. I only ask that you consider both sides of the coin before you go forward with whatever decision you make regarding this very important and delicate issue.

Everything I have stated in my testimony is verifiable and supported by a preponderance of documented evidence which can be established from a number of sources. Those sources include: The United States Inspector Generals Office; the Bureau of Indian Affairs, Branch of Acknowledge and Research, the Division of Tribal Government, and the Office of Indian Services. Written testimony submitted to the Department of the Interior, at the Public Hearing held in Eugene, Oregon, August 8, 1985, regarding the Secretarial Proposal for the Distribution of the Judgment Funds of the Cow Creek Band of the Umpqua Tribe of Indians in the U.S. Claims Court Docket No. 53-81 L, as well as the Public Hearings records of P.L. 96-251. My statements regarding the reasons behind the secrecy of H.R. 3214 and the claims of unlawful membership I have made at this hearing today can and would be verified, if this Committee will request clairification from the Branch of Acknowledgement and Research of The Bureau of Indian Affairs, and the BIA Portland Area Office, regarding the lineal descendency of the SUSAN NONTA THOMASON FAMILY regarding their claim to being Cow Creek Indians. I also respectfully suggest that this Committee investigate thoroughly the following issues that are directly related to this legislation.

(1) Litigation is currently pending in the UNITED STATES DISTRICT COURT-STATE OF OREGON (Robert L. Buschmann v. Cow Creek Corporation. Docket No. 85-6137-E.) regarding many issues that correspond with this legislation. It is the feeling of many of the Creek Tribal members that this legislation is an attempt at a devious means to circumvent any judgment of and/or decision made by the Court regarding the referenced litigation. I am a co-plaintiff in this litigation but at this time, a Court Decision has not been issued.

(2) The persons requesting Congressman Weavers support and introduction

of this legislation, have recently been accused of and are under investigation for Fraud, Criminal Conspiracy to Defraud the Cow Creek Band of the Umpqua Tribe of Indians, Fraudulent Misrepresentation, and Legal Malpractice.[7]

(3) Sue Shaffer is representing herself as and claims to be a Cow Creek Umpqua Indian Descendent, when in fact she is of Walla-Walla and Algonquin Indian descent.[8]

(4) Attorney, Dennis J. Whittlesey has specifically stated and/or implied that he has traded on personal political favors owed to him on other non-Indian related matters and that by doing he was able to have a bill passed, which may not have otherwise happened, by the house of Representatives, unamiously!![9]

(5) Members of the a Cow Creek Indian Distribution Committee convinced certain Cow Creek Tribal members to support the "Tribal Distribution Plan" (which is incorporated into H.R. 3214), by various means, including, but not limited to; coersion, promises of personal benefits,[10] threats of disqualification for Tribal membership, no proof of descendency in the Tribe, and many other means of enticement, such as, promises of a $5000.00 one time payment to a specific group of persons to gain their support of the plan.

The Cow Creek Enabling Act, Pub. L. 96-251 was written, introduced and passed for a definite and specific reason. TO RIGHT THE WRONGS INCURRED BY THE COW CREEK BAND OF THE UMPQUA TRIBE OF INDIANS THAT DID NOT GO TO, STAY AT, OR RECEIVE BENEFITS FROM THE UNITED STATES GOVERNMENT BECAUSE OF THEIR RESIDENCY AND ENROLLMENT AT OR ON ANY RESERVATION IN THE STATE OF OREGON.[11] Descendents of those Cow Creek Indians are the only qualified beneficiaries of the judgment funds awarded in the U.S. Claims Court Docket N. 53-81 L, and are defined in the Cow Creek Enabling Act (P.L. 96-251). Each and every qualified descendent, as defined in P.L. 96-251 is entitled to share EQUALLY in the distribution of those funds and should not be denied that right. Any other person or persons not otherwise entitled to and/or qualified should not, and even more important, must not benefit from this judgment award, as proposed by H.R. 3214.[12]

A close and complete study of the "Tribal Distribution Plan" will show that it is discriminatory (elderly assistance plan), unfair (does not provide equal protection), unjust (allows persons not otherwise entitled to share the benefits of persons who are entitled), and undemocratic (prevents a person from making his own descisions in determining how his individual share of judgment funds are to be used).

The special committee and the small group of persons that developed the alleged Tribal Plan and the legislation as proposed by Congressman Weaver in H.R. 3214, consisted of persons who are NOT Cow Creek Descendents, by an Attorney who has been ripping off the Cow Creek Tribe, and by a Tribal Chairman, who is not even a Cow Creek Descendent!

The persons pressuring for the introduction and passage of this legislation stand to lose a great deal of power and control as well as money and benefits that this legislation will unjustly and illegally continue to provide to them if it is passed by Congress.

On May 5, 1985, I was duly nominated and elected at a Cow Creek Tribal Council meeting, by the Cow Creek Tribal Council; to serve as a member of the Interim Committee of the Cow Creek Indians, along with 3 other Tribal Members.[13] The function of the Interim Committee was to conduct the day to day operations of the Cow Creek Tribe, the tribal office, and to supervise the Tribal business until a legal and lawfully conducted election could be held. The Interim Committee agreed to work directly with the Bureau of Indian Affairs to accomplish those functions and responsibilities.[14] Because of the previously stated existing litigation against the Tribal Corporation and some of the former Directors of the Corporation, the BIA chose to wait until a decision was made regarding the litigation. The trial of the suit took place on February 24 thru 29, 1986. I, and many others are anxiously awaiting the Judge's decision of the litigation at this time.

When the Interim Committee became aware of H.R.3214, and it's introduction by Congressman Weaver in August of 1985, we were dumbfounded. We had previously been notified that BIA hearings were scheduled for August 8, 1985,[15] and after the testimony was taken & studied and gone over, a Distribution Plan would be submitted to Congress by the Bureau of Indian Affairs (as provided for pursuant to 25 U.S.C. 1401 et seq., as amended), which would then govern the distribution of the Cow Creek Judgment Funds Awarded pursuant to the U.S. Claims Court, Docket Numbered 53-81L.

After we learned about Weaver's legislation, we requested copies of H.R.3214, mainly to see what someone was trying to get away with. After studying the proposed legislation and after we were able to calm our initial anger, the Interim Committee took on the task of informing all of the Tribal members that we had addresses or telephone numbers for, about H.R.3214. We requested that they give us their response to the Bill we asked for their input

about H.R.3214. Every response we received voiced a great amount of anger as well as a total opposition to the Bill. Many of the Tribal members questioned how the Cow Creek Tribe could do something like this without the consent of the Tribal Members.[16]

The Interim Committee members began working on a solution to the problems that would and could be created by the passage of a Law like H.R.3214. Many, many hours and a large amount of personal money was expended by the Interim Committee and other Tribal Members in the attempt to stop the passage of H.R.3214. Alternative legislation was formulated by the Interim Committee from the input and suggestions received from many Tribal members.[17]

The alternative legislation was then circulated among Tribal Members until a suitable proposal was determined to be complete, satisfactory, and approved by nearly 85% of the Cow Creek Tribal membership. After finalizing the proposed legislation, we forwarded our plan to our Congressmen and requested that it be introduced to replace H.R.3214.[18] We were informed and it was suggested by our Congressmen to submit our proposed alternative legislation before the House Committee at the time set for hearings of H.R.3214. When we learned of the date of the Committee Hearings, it was decided by the Interim Committee that we should try to send Tribal Representatives to Washington D.C. to testify at the hearings and at that time,request that our proposed alternative legislation be used instead of H.R.3214.

Somehow, our dedicated Tribal Members were able to provide funding to allow 5 Cow Creek Tribal Representatives to make the trip to D.C. Some of the members paid all of their own expenses, and, I am sure there were many members who donated much of their Christmas money to the other Representatives, so they would be represented at the Congressional hearings. I and the other four Tribal Members who were able to attend the hearings represented each one of the Cow Creek Descendant familys. When our Tribal-Family Representatives met with Congressmen and Senators and then attended the Hearings before the House Committee, the family Representatives knew we would be faced with a hard, uphill battle when we attempted to have our alternative legislation considered by this Committee.

I was appalled after being told by the other Tribal members of their having to face a very degrading, abrassive, and intimidating verbal attack in the hallway, just prior to the hearings held by the House Committee on Interior and Insular Affairs, on December 10, 1985. The verbal assault was made by Dennis J.

Whittlesey, the alleged tribal attorney, and Steven Beckham. The attack was made against the Rainville and Dumont/LaChance families regarding their heritage, descendancy, and their right to share in the Judgment Award. We feel it was a well planned attempt to prevent those family members from testifying against H.R. 3214.

The only Congressman that attended the hearings was Jim Weaver, and he had to leave on one occasion to cast a vote on the House floor. Much of the time allotted for our testimony was used up by the absence of Congressman Weaver, & more of the alloted time was used up by the BIA's Representative and in the shuffling of papers by the alleged Cow Creek Tribal attorney when he was questioned by Congressman Weaver. The oral testimony of our 5 Tribal Representatives was cut to a bare minimum, and altho we were able to submit our written statements in full, to be made a part of the hearings records, I personally feel that Congressman Weaver cut off parts of our testimony, was extremely rude and we were treated with very little respect. It was quite depressing to have traveled so far, to incur the expense that we had all incurred, and then be treated the way we were at the hearings.

I do want to say that the balance of the trip was much more enjoyable. We were warmly received at all of the other Congressional Offices. If we were not able to personally see the Senators and Representatives at their offices, we were welcomed by friendly, well informed staff members of the Congressmen.

It was no big surprise to us when we were later informed that H.R.3214 had been passed out of the House Committee on Interior and Insular Affairs to the full House, and it was then passed in the full House, and sent to the Senate.

At this point it was suggested that we should submit our proposed alternative legislation to the Senate Select Committee on Indian Affairs and to our Senators as amendments to H.R.3214, rather than a bill to compete with Congressman Weaver's legislation.

I must state that I, and the family Members I represent here today, are completely opposed to H.R.3214, cited as the "Cow Creek Band of the Umpqua Indians Distribution of Judgment Funds Act".

We were strongly opposed to the plan for distribution of the judgement funds which was prepared by the Judgment Fund Committee[19] (under the direct supervision of the Board of Directors of the Cow Creek Tribe, Dennis Whittlesey and Stephen Beckham), and more specifically, because those persons authored H.R.3214 for the purpose of mhking the assets of the Cow Creek Tribe more

readily available to themselves. We are also opposed to ANY plan which intends to allocate all of the judgment award funds to the Cow Creek Tribe and allow the Board of Directors to set up whatever kinds of programs they wish and also administer the funds without COMPLETE Tribal Council approval.

The proponents of H.R. 3214 Have claimed and even testified at the House Committee hearings on December 10, 1985,[20] that the Tribal vote for the Distribution Plan submitted by the Tribe reflects the "overwhelming sentiment" of the Tribal Membership. That testimony is a BLATANT LIE!! Shaffer testified that a meeting was held in California with a large group of tribal members in Sacramento, California, in April of 1985. Some Tribal members were told that they (the California Tribal members) would have an opportunity to discuss the Tribal Committees Distribution Plan and that a vote would be held to either accept or reject the proposed plan.[21] The only thing that took place at the meeting of California Tribal members was the bragging by Dennis Whittlesey about how great and clever he was because he had been the person who had almost single-handedly had the Cow Creek Enabling Act (Pub. L. 96-251), and the Cow Creek Recognition Act (Pub. L. 97-391), passed into Law. He then told the Tribal members how the Judgment Fund Distribution Plan was going to be presented to the Secretary of the Interior. There was very little discussion of the plan and NO vote to accept or reject the plan was ever taken.[22]

Shaffer testified that the entire meeting of May 19, 1985, was conducted under BIA supervision and that the BIA representatives supervised the secret balloting and the counting of those ballots.[23] The BIA Representative informed me that his attendance at the meeting was strictly as an observer and that the BIA is prevented by Department policy to conduct or supervise any Indian Tribal Meeting or business, unless required to do so by statute!

An "Elderly Assistance Program might have a chance of working if it were structured as proposed in our amendment # 5. I ask you, Why a $5000.00 one time cash payment? A $1000 payment per member would allow 5 times as many persons to receive a payment each year, and why not make this a perpetual program? Why discriminate against anyone who is not 50 years old on December 31, 1985? With this cutoff date, anyone above school age will never receive any cash payment.

In reference to the other proposed programs that would be available to Tribal members according to this legislation and the Tribal Distribution Plan, The MAJORITY of the programs are obtainable from other sources. The plan

proposed by H.R.3214 is not equal, is highly prejudiced, and will make second classed citizens of more than 1/2 of the Cow Creek Tribe in defining a service area for Cow Creek Tribal Members. The Court of Claims Judgment Award is for ALL lawfully eligible Cow Creek Descendants, not just for those members living in a specifically designated area![24]

H.R.3214 and the proposed Tribal Distribution Plan both place absolute, total power, as well as complete control over all Tribal assets, into the hands of the Tribal Board of Directors by defining the Board as the "sole" governing body of the Tribe. The Board of Directors consist of 11 persons and this legislation would allow these 11 persons to make critical and important decisions and set policy that ultimately would effect approximately 700 people. There is no check & balance system. There are no provisions in H.R. 3214 which would allow for issues decided by the all powerful Board to be overturned by the Cow Creek membership of the Tribal Council.

There are no democratic election procedures that provide for changes to be accomplished by the Tribal Council.

SEC. 4 (f) of H.R.3214: Covers too broad on an area. It is not specific enough. There is no limit set for Attorney Fees--it does not state if this section would allow for the payment of costs and fees of the litigation currently pending in Federal Court against the disolved Cow Creek Corporation and former corporation board members and others, even tho the litigation is not a tribal issue and should not be paid for with tribal funds. (The suit involves issues that took place before the Cow Creek Tribe became Federally recognized!)[25] This section does not clearly outline a specific plan with respect to what the Tribe will be paying in the future as well as what has been paid in the past to attorneys for their legal assistance.

SEC. 4(g) of H.R.3214: How can anyone justify setting aside $315,000.00, or even consider purchasing a piece of property that is in such a poor, run-down, questionable condition. Especially with an appraised value that is by far, much less than the selling price.[26] It is inconcievable to me that anyone would then be allowed to spend $34,000.00 of Federal Tax (HUD) dollars on this property and end up with property which is as underdeveloped and non-productive as the Evergreen property. Records will show that the property hasn't even come close to making a profit for several years. The state of the economy is worse today than it was a few years ago and the demand for the facilities, such as the ones that this property has to offer, is at an all-time

low. The Evergreen property is just another prime example of how the Board of Directors operate without the advice and consent of the full Tribal Council.

Another very big concern of mine is that, Dennis J. Whittlesey was acting as legal counsel for, representing a Federally Recognized Indian Tribe, while using Federal Funds & United States tax dollars to accomplish whatever the Board of Directors wanted to do, and he was doing so without an approved contract, as required by 25 U.S.C.A., Sec 81, and all of the while illegally accepting fees and payment from the Cow Creek Tribe and/or its members.[27]

PROPOSED AMENDMENTS

All of the Cow Creek Tribal Members I have presented the proposed amendments to, support the amendments as strongly as I do.

I have submitted letters and petitions fully supporting the six amendments proposed to this Committee by the Cow Creek Indian Tribal Interim Committee, on which I serve as a Committee Representative.

AMENDMENT No. 1: The wording of this amendment is consistant with Pub.L 97-251. The definitions are identical to those in Pub. L. 96-251 and should not be changed if the purpose of the Law is to be fulfilled.

AMENDMENT No. 2: This amendment is consistent with Pub. L. 96-251 and will provide a mechanism for enrollment of those persons lawfully eligible for enrollment who were unknowingly and occasionally unlawfully, omitted from the roll prepared for Pub. L. 96-251, and would also remove those persons who do not qualify for membership pursuant to Pub. L. 96-251.

AMENDMENT No. 3: This amendment provides for the election, within sixty days of the passage of this act, and further provides for the final authority of the Tribe to be vested in the Tribal Council as defined in amendment no. 1. This amendment also defines voter eligibility.

AMENDMENT No. 4: This amendment provides a mechanism for the preparing of a Tribal Constitution and Bylaws and defines a fair and equal election time and procedure.

AMENDMENT No. 5: This is a FAIR & EQUAL Plan for the distribution of judgment funds of the Cow Creek Tribe. This amendment has a provision for the protection of ALL of the Tribal Judgment Fund Assets and could not be changed without Congressional action. There are no second-classed citizens created by plan. ALL Tribal members share equally.

AMENDMENT No. 6: Defines the general provisions necessary to carry out this Act.

IN CONCLUSION

I, and the persons that are represented by the materials I have submitted to this Committee (approximately 200 Cow Creek Tribal members and descendants), believe that it is vitally important for the SENATE SELECT COMMITTEE ON INDIAN AFFAIRS to consider all aspects of H.R. 3214 and the repercussions that could be created by the passage of this type of unfair legislation with the present existing language. WE respectfully request that this Committee seriously consider and incorporate all of the amendments proposed by the Cow Creek INTERIM COMMITTEE. The amendments reflect the complete disclosure, review, input, and approval of most of the Cow Creek Tribal Membership and many other fairminded concerned citizens.

I hope I have not offended anyone with the testimony I have given here today. If I have, I truly apoligize. The whole purpose and meaning in my being here today was to be frank, factual, to speak the truth, and to carry my peoples message of TOTAL OPPOSITION of H.R. 3214 to this Senate Select Committee on Indian Affairs.

I deeply appreciate and thank you for allowing me to testify at these hearings today.

RESPECTFULLY SUBMITTED this 6th day of August, 1986.

RONALD E. BUSCHMANN

LIST OF REFERENCES

1. Cow Creek Tribal meeting minutes: August 13, 1977.
2. Cow Creek Tribal meeting minutes: November 13, 1977.
3. Cow Creek Tribal meeting minutes: September 9, 1979.
4. Plaintiffs Exhibit: U.S. District Court-State of Oregon, Doc. # 85-6137-E.
5. Plaintiffs Exhibit: U.S. District Court-State of Oregon, Doc. # 85-6137-E.
6. BIA rejection letter. Indian Census Records. BIA Acknowledgement letter.
7. Complaint to U.S. Inspector General: August 25, 1985.
8. Catholic Church Records of the Pacific Northwest: Vancouver Vols. I & II.
9. Transcript: Tape recording of Sacramento, Calif. Tribal meeting. 4/14/85.
10. Affidavit: Gary E. Buschmann re: Statement of Dennis Whittlesey.
11. Legislative History: Pub. L. 96-251.
12. Section 4.(a); Pub. L. 96-251.
13. Cow Creek Tribal meeting minutes: May 5, 1985.
14. Cow Creek Tribal meeting minutes: May 5, 1985.
15. BIA: Notice of Hearings, held August 8, 1985, re: Secretarial Proposal.
16. Tribal Membership written surveys.
17. Alternative Legislation: Submitted to Congress for House Hearings.
18. Letters to Congressmen supporting Alternative Legislation.
19. Tribal Judgment Distribution Plan Proposal letter. Jan., 85 & March, 85.
20. Shaffer testimony: H.R. 3214. December 10, 1985.
21. Recorded phone conversation: Louella Michaels-Eunice Nichols. March, 1985.
22. Transcript: Tape recording of Sacramento, Calif. Tribal meeting. 4/14/85.
23. Shaffer testimony: H.R. 3214. December 10, 1985.
24. Legislative History: Pub. L. 96-251.
25. Complaint: U.S. District Court-State of Oregon, Doc. # 85-6137-E.
26. Evergreen Motel Property: Tax Records, etc.
27. Cow Creek Tribal meeting minutes: 1980-1986. Financial account records.

THE DOCUMENTATION AND/OR MATERIALS LISTED ABOVE ARE AVAILABLE AND WILL BE PROVIDED TO THE COMMITTEE UPON REQUEST.

PETITION

WE, the undersigned members of the Cow Creek Band of the Umpqua Tribe of Indians and/or other interested citizens, declare that: We have read, studied, & compared the attached materials. The 6 amendments submitted by the Interim Committee of the Cow Creek Indians, provide a fair and equitable Distribution Plan. WE strongly support the amendments to H.R.3214, cited as "Cow Creek Band of Umpqua Indians Distribution of Judgment Funds Act", and request the SENATE SELECT COMMITTEE ON INDIAN AFFAIRS incorporate the amendments to be the final language of H.R.3214.

NO.	NAME	ADDRESS	CITY	STATE ZIP	TELEPHONE #
46	[illegible]	P.O. Box 1351	N. Highlands	Ca 95660	(916)344-0552
62	Loral L Fox	P.O. Box 1351	N. Highlands	Ca 95660	(916)344-0552
38	Faye Gutierrez	2911	Grove Ave	Sac 95815	(916) 925 1856
39	Roberta Lee Chapman	P.O. Box 275	Canyon	Or 97205	(503)884-5556
43	Lynetta Johnson	P.O. Box 1743	South Highlands	Ca 916-348-1743	
51	Delbert Fox Jr.	P.O. Box 1351	North Highlands	Ca 95660	916-344-0552
52	Betty J. Hulet	4645 Don Julio Blvd	North Highlands	95660	916 331-2674
53	[illegible]	4645 Don Julio Blvd	North Highlands	CA 95660	916 331-2674
54	Sofie Pfenger	1637 Ketelsen Ave	Sac 6 Ca	95815	925-1554
55	Frances Potts	Rt 6 Box 8	Blackfoot	Idaho 83221	
56	Jeanine Nichols	200 Amber Lane	Fairfield	Ca. 95533	(707) 429-0019
33	Douglas Potts	RT. 6 Box 3	Blackfoot	Id. 83221	208-785-4813
30	Ralph E Potts	2930 Yellowstone Ave	Idaho	(208)785-4809	
34	Deborah E. Potts	Rt#6 Box	Blackfoot,	Idaho 208-785-4813	
47	Sherri Potts	Rt#6 Box 5#14	Blkft,	Idaho.	
27	Neil Potts	Rt#6 Box 5#14	Blkft	Idaho	
21	James Potts	Rt#6 Box 5#12	Blkft	Idaho	
25	Henry Rose	14 Lovell	Blackfoot	Id	
26	Michael W Ward	441 N. Kimball Road	Blackfoot	Idaho	
27	Faye Steele	15 Lovella	Blackfoot	Id	
28	Rodger Steele	15 Lovella	Blkft	Id 83221	
29	Clyde Ratchell	353 South Univers.	Ty	Blackfoot	Idaho
24	Joan Funk	355 S University	Blackfoot	Idaho 83221	
25	Bridget Pinan	8623 N Dana	Port.	Ore. 97203	289-4376
24	Katrina Pinan Buchanan	8623 N Dana	Port.	Ore. 97203	289-4376
27	Joseph C. Pinan	8623 N Dana	Port.	Ore. 97203	289-4376

James R. Sturgeon 7209 Cheshire Dr. Citrus Heights Ca.
Jennie Sturgeon 7209 Cheshire Dr. Citrus Heights Ca.
Audrey J. Taylor 815 Indian Ranchria Rd Auburn Calif.
EARL L. TAYLOR 815 Indian Ranchria Rd AUBURN CALIF
Glenn E. Taylor 815 Indian Ranchria Rd Auburn Calif.
Mildred L. Sturgeon 3390 Taylor Rd. Loomis Ca. 95650
Thomas M. Sturgeon 3390 Taylor Rd. Loomis Ca.
Jack R. Sturgeon 2775 Clay St. N. Sacto Ca.
Percy L Freeman 3308 Valley View Rd Roseville Ca 95672
James L Freeman 3308 Valley View Rd. ROSEVILLE, CA 95672
Karen Mooney 2775 Clay St. SAC CA 95815.
MARINE Greeley STATION A Box 72 Auburn Calif
Melvin Greeley . . . . . " " "

PREPARED STATEMENT OF DWIGHT DEE DEARDORFF

LOU GRAY DRIVE
CANYONVILLE, OREGON 97417

Member, Cow Creek Band of Umpqua Tribe of Indians

In opposition of H.R. 3214 and amendments

August 6, 1986

I, as an enrolled tribal member can only object to H.R. 3214 and the proposed amendments on the basis of what has been published in the tribal newsletter. The only portion of H.R. 3214 which was taken to a vote of the people was the distribution plan portion. I voted no then and I still object, for the same reason, it is discriminatory.

The amendments were published in a newsletter and I have objections to those. According to existing, accepted By-laws, the Board is the sole governing body of the Tribe. According to the proposed amendment, I see no significant difference. This is based on the wording, "as determined by the Tribe's governing documents". The original wording was much more honest.

I object to the second proposed amendment on the basis that our present By-laws are in question, we do not have a Tribal Constitution and if there is a Membership Ordinance, I do not know about it.

I object to the portion pertaining to the eligibility of non-tribal members. I do not object to any services they might recieve. What I object to is, if they can recieve services, then they should be enrolled and entitled to the same benefits as any other enrolled member. This appears to me to a repeat of a concept which led to World War II, that some are more equal than others. This is a concept I do not believe in nor approve of.

The Purpose stated is to provide for funds awarded in the Claims Court docket numbered 53-81L. If this is true, why then is P.L. 96-251 being ignored? This is the law which pave the way for these funds to be won and distributed. This law covers many areas, including designating the governing body, as further defined in our Corporate By-laws at that time.

I will object to any Bill being presented as a Tribal Bill that I and others have not had the opportunity to use the one privelege given us as a democratic society, the right to vote, by absentee ballot, if necessary.

Thankyou for the opportunity to voice my concerns.

Dwight Dee Deardorff

PREPARED STATEMENT OF ROSE DEARDORFF

Member, Cow Creek Band of Umpqua Tribe of Indians
in opposition of H.R. 3214 and amendments

August 6, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Rose Deardorff. I reside at Rt. 1, Box 118-B, Riddle, Oregon 97469. I am an enrolled member of the Cow Creek Band of Umpqua Tribe of Indians claiming lineal descendancy from Tom and Clementine Rondeau. I have served on the Board of Directors and on various Tribal committees. I, and my family, have worked many years toward the goal of past generations---to right a wrong. This is my second trip to Washington, D.C. Since I do not have access to Federal grants and Tribal funds, I have paid my own expenses for both trips. I appreciate the opportunity of being able to testify here today.

H.R. 3214 DISBURSEMENT PLAN

Elderly assistance program: Under the proposed plan, I would be eligible for the $5,000.00 payment---my children and grandchildren would not qualify. This plan discriminates against Tribal members who are under the age of 50 years. I am aware that the elders have worked hard and supported the Tribe. However, so have many other members not classified as elders. This is one reason why I oppose H.R. 3214. Any payment to the membership should be fair and equal.

Higher education, vocational education and housing assistance: These programs would still only help a small portion of the membership. Instead of spending this large amount for these programs grants could be obtained and then use this portion of the funding for more beneficial programs.

Economic Development, Miscellaneous activities and Evergreen properties: I definitely oppose these programs. For over three years the Tribe has spent thousands of dollars for economic development and what is there to show for it today? Nothing!!! It is true the proponents of this bill want a large sum for administration and activities of the Board. If this bill would pass, many thousands would go to pay professional fees, litigation expenses, etc.---the general Tribal Council would see no benefit. With regard to the Evergreen properties---there is no way this property will prosper and pay dividends.

H.R. 3214 - AMENDMENTS

I oppose the amendments for the following reasons:

1. Amendment No. 1: This puts the power back into the hands of the Board of Directors. The proposed Constitution---still in the rough draft form---takes everything away from the Tribal Council.
2. Amendment No. 2 and No. 3: These amendments should be written to follow the Land Claims bill---Public Law 96-251. This law defines the term "Cow Creek Band of the Umpqua Tribe of Indians" as meaning "the group of persons descended from persons considered members of such band for purposes of the Treaty entered into between such band and the United States on September 19, 1853".

I believe that all persons who can prove ancestry to those persons inhabiting the land prior to the Treaty of 1853 should share and share alike in the judgment funds. I believe a

beneficiary list should be prepared by the Bureau of Indian Affairs including qualified members who have been left off the roll and removal of persons not qualified.

The Federal Government has paid, in the past, many persons who do not qualify. H.R. 3214, if passed, would repeat this error.

A copy of my testimony dated December 10, 1985 is attached. Again, thank you for allowing me to express my opinions and concerns.

Respectfully submitted,

August 6, 1986

Rose Leardorff

PREPARED STATEMENT OF CHRISTY LYN DUMONT

LOU GRAY DRIVE
CANYONVILLE, OREGON 97417

Member, Cow Creek B and of Umpqua Tribe of Indians

In opposition of H.R. 3214 and amendments

August 6, 1986

I object to any legislation, not developed totally at tribal level. Even though I was not old enough to vote, I remember attending tribal meetings during the time the Litigation Law was developed. Each and every paragraph, section, meaning was discussed and voted on. This was truly written and approved by the people.

When the Recognition Law was written, many were uncertain as to its meaning. We were told only that it was a very simple Bill that would give us status as a Tribe. Then, many months later, we leaned, much to our regret, that the Recognition Law had meaning that differed from the Litigation Law.

N ow, H.R. 3214 differs again. I don't understand why each and every aspect of our tribe has to be defined, redefined and refined yet again. My understanding as an enrolled member was that this Bill paves the way for distribution of funds, when in fact, it does so much more. Had the Bill stopped at just the distribution of funds, it still would be acceptable to me, it is descriminating.

The fact is, H.R. 3214 redefines membership, redefines the governing body, defines and isolates tribal members and non-tribal members. There is too many areas covered in this Bill that has the potential of hurting and even destroying the very core of the Tribe. There are too many areas that address special interests of a few, rather than the majority.

Unless this legislation can be amended to go back to the original intent of this Tribe, I will continue to object to it.

Respectfully submitted by,

Christy Lyn Dumont

Christy L. Dumont

PREPARED STATEMENT OF GEORGE DAVID DUMONT
RT. 1 BOX 287 A
MYRTLE CREEK, OREGON 97457

Member, Cow Creek Band of Umpqua Tribe of Indians

In opposition of H.R. 3214 and amendments

August 6, 1986

I want to simply say that all I really want is for all of my people, my family to be treated equally and fairly. What I know and understand of H.R. 3214 and its amendments does not do this. The language does not mean anything different than the original. The one thing that is puzzling me is how we can have non-tribal members and still treat everyone who is deserving equally. What this really means is unenrolled tribal members, people who are eligible by birth and descendency to be enrolled, but are not for whatever reason. If the governing body is willing to extend services to these people, why not enroll them? Then they would be equally eligible for any services available to the tribal membership.

I understand the part referring to the governing documents. What I fail to understand is how membership in the Tribe can be determined by documents which to my knowledge do not exist. H.R. 3214 and its amendments leave too many vague areas, not clearly defined. And those that are well defined descriminate. I do not believe myself to be more eligible for services than someone else who shares my same bloodlines, simply because I am enrolled and someone else is not.

A Tribe is supposed to be a government, a democratic government, that each and every "citizen" shares an equal statis. We already have laws passed, which this Bill differs from.

I oppose H.R. 3214 and the amendments due to conflicting with past laws, do its descrimination and isolation of tribal and non-tribal members and because it does not have the entire Tribe's knowledge of what is being presented in the Tribe's behalf.

Thankyou for the opportunity to state my concerns.

George D DuMont

George David DuMont

PREPARED STATEMENT OF LINDA J. DUMONT
BRADLEY DRIVE
CANYONVILLE, OREGON 97417

Member, Cow Creek Band of Umpqua Tribe of Indians

In opposition of H.R. 3214 and amendments

August 6, 1986

I as an enrolled tribal member object to H.R. 3214 and the amendments. Sec. 5 (a) refers to the Tribal roll as published in Interrogatory numbered 14. I do not approve of this wording. How do I and others know our name appears on that roll? We have not had the opportunity to view it to know. In fact, all the language pertaining to membership is contradictory and confusing. According to this Bill, if translated literally means that those born after the date of enactment of the Recognition Law, December 29, 1982, would be removed from the Tribe's Supplemental Roll, then the nonexisting Constitution would be amended to redefine membership qualifications and a Membership Ordinance would be developed to REenroll these same people. And further, that people will no longer have to prove descendancy back to those considered members for the purpose of signing the 1853 Treaty. Our family have documents proving our residency well before the signing of the 1853 Treaty. If this is allowed, the Bill confuses and changes the entire structure of the Tribe.

I feel, no proposed legislation should change the accepted membership criteria and qualifications. I see this as a continuing pattern, one that each move has a preordained significance and outcome. But, to whose benefit, for the entire membership, or for a given few?

For this reason and many more, this one area being of most importance to me, I pray you stop H.R 3214 and not allow this hideous legislation go further.

Or if this legislation is found to have merit, I ask you to amend it, for the benefit and equal treatment and consideration of each and every member.

Thankyou,

Linda J. Dumont

Linda J. Dumont

PREPARED STATEMENT OF PATTY JEAN DUMONT
P.O. BOX 337
CANYONVILLE, OREGON 97417

Member, Cow Creek Band of Umpqua Tribe of Indians

In opposition of H.R. 3214 and amendments

August 6, 1986

I don't always understand political matters. I have had the opportunity to read H.R. 3214 and the amendments were published in the tribal newsletter. I do not understand why everything that we have set up and followed concerning membership in the Tribe has to be changed. If the Recognition Law wasn't right, why was it written that way? Is each and every Bill written going to change the previous law? I have been told that the newest Law is the one that governs. That I understand. But, does each one have to change and dispute the one before it?

I was happy with the wording in P.L. 96-251. It was simple and everyone knew what it meant. I did not like the Recognition Law, because it left too much undefined. And now, H.R. 3214, says something totally different. It changes too much. Many people, like myself, do not understand its full meaning.

If this Bill could be amended to treat each and every member the same, use plain wording that is easy to understand and not change the very foundation of the Tribe, that I would agree to.

Respectfully submitted by,

Patty Jean Dumont

Patty Dumont

PREPARED STATEMENT OF SANDY RAYE DUMONT
P.O. BOX 343
CANYONVILLE, OREGON 97417

Member, Cow Creek Band of Umpqua Tribe of Indians

In opposition of H.R. 3214 and amendments

August 6, 1986

My one concern has been, if this Bill isn't controversial, why hasn't the tribal government made it available to the membership? I had to follow other means of gaining access to the Bill written for the distribution of funds to the Tribe of which I am a member. I knew about the Distribution Plan and the amendments, but not the entire Bill.

I have been told that each successive piece of legislation governs, this I can understand. But, was the Litigation Law so bad that membership in the Tribe had to be redefined in the Recognition Law? And was the Recognition Law so bad that membership has to be redefined again in H.R. 3214?

The Litigation Law (P.L. 96-251) was simple to understand and explained the boundaries of membership requirements well. The Recognition Law (P.L. 97-391) had very confusing wording, which lead to too many conflicting interpretations. And now, H.R. 3214, says something totally different and is even more confusing.

H.R. 3214 descriminates and isolates non-tribal members. This terminology should be UNenrolled tribal members. It no longer requires people to prove residency prior to 1853. This was one of the main issues in the Litigation Law and has been controversial at tribal level. H.R. 3214 leads one to believe, that for legislative purposes, that some are more deserving than others and that special consideration is being given.

If this legislation could be amended, not change the very basis of our Tribe, treat each and every deserving member equally, not descriminate, not have the negative and damning aspects it now has, I would be supportive.

Respecfully submitted by,

Sandy Raye Dumont

Sandy R. Dumont

PREPARED STATEMENT OF EDNA MAE HAGEN
RT. 1 BOX 118-B
RIDDLE, OREGON 97469
Member, Cow Creek Band of Umpqua Tribe of Indians
In opposition of H.R. 3214 and amendments
August 6, 1986

I, as an enrolled tribal member had to seek other avenues to gain access to H.R. 3214. I objected to the Distribution Plan when it was first introduced. I felt it to be descriminatory. I then read the proposed amendments to H.R. 3214 in the newsletter. After reading H.R. 3214, I now realize this legislation is being presented as being the Tribe's wishes. This is not entirely correct. The Bill, as a complete document has never been printed in a tribal newsletter.

The amendments are misleading. The current, questionable By-laws state the "tribe's governing body" to be the Board of Directors. Therefore, the wording referring to the Tribe's governing documents changes nothing.

Sec. 5 (a) refers to membership and states that after enactment it will be determined by the Tribal Constitution, By-laws, and Membership Ordinance. We have NO Constitution, the By-laws are in question and to my knowledge, we have NO Membership Ordinance. Again, a play of words.

Sec. 6 (a) and (b) really refers to UNenrolled tribal members, NOT non-tribal members, another play of wording. I object to these paragraphs completely. If a person meets enrollment criteria by right of birth and lineage, that person has the right to enjoy benefits of an ENrolled member, not as an UNenrolled tribal member. This is also descriminatory.

The purpose stated does not coincide with P.L. 96-251, which paved the way for the present situation. The Cow Creeks have good laws on record and I feel any distribution of funds should follow the guidelines as previously set in P.L. 96-251.

I have more voting priveleges in civic matters than I have in tribal matters. I do NOT believe in the concept of "some are more equal than others" and this is what H.R. 3214 appears to be saying.

I thankyou for the opportunity to voice my heart felt objections.

Edna M. Hagen

Edna Mae Hagen

PREPARED STATEMENT OF ALICIA HAYZLETT
MYRTLE CREEK, OREGON 97457

Member, Cow Creek Band of Umpqua Tribe of Indians

In opposition of H.R. 3214 and amendments

August 6, 1986

I have recently learned the full implications of H.R. 3214 and the amendments. I have reason to know the plight of non-tribal members. By accident and the grace of God, I and my children are enrolled members. Yet, due to circumstances beyond her control, my sister and her children are not. We share the same bloodlines.

H.R. 3214 does make provisions for non-tribal members to recieve certain benefits. Why should my sister and her children bear the burden of being referred to as non-tribal members, while I and my children enjoy the benefits of being enrolled members? I don't feel I am any more deserving than my sister and her children.

H.R. 3214 does not follow the pattern as set by the Litigation Law (P.L. 96-251), nor does it follow the less desirable Recognition Law (P.L. 97-391). It does not make sence that each respective law redefines the areas of importance to the Tribe.

Unless H.R. 3214 can be amended to treat all deserving people of this Tribe equally and justly, I will continue to oppose it.

Respectfully submitted

Alicia Hayzlett

PREPARED STATEMENT OF JANEY LaCHANCE HEUSSNER
Member, Cow Creek Band of Umpqua Tribe of Indians
In opposition of H.R. 3214 and amendments
AUGUST 6, 1986

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE AND LADIES AND GENTLEMEN:

My name is Janey LaChance Heussner. My address is 972 N.E. Division Street, Myrtle Creek, Oregon 97457. I am an enrolled member of the Cow Creek Band of Umpqua Tribe of Indians. I am a direct lineal descendant of the Dumont/LaChance family. These ancestors lived and occupied the lands described in the Treaty of 1853 between the Cow Creek Indians and the United States government. I am grateful to be here today and have the opportunity to speak in opposition of H.R. 3214 and amendments for many family members as well as myself. This is my second trip to Washington, D.C. to testify regarding this bill. I have personally paid my own expenses for both trips.

H.R. 3214:

I am an elder and would qualify for the $5,000.00 payment. I am against this part of the plan as it is not fair to all Tribal members---it would leave off my children and grandchildren. I do not feel that I am any more deserving than any other member just because of my age. I feel the favorable vote of the disbursement plan held May 19, 1985 was a "come on" for the elders because of the promised $5,000.00 payment. I believe the majority of the 78 votes favoring the plan came from the elders. Members in other areas should have had an opportunity to vote. The vote of May 19, 1985 represented approximately 100 members residing in the area. My concern is for over 600 members who had no voice in this important decision.

With regard to the Higher Education and Vocational Training Program---It seems to me that members living within the accepted Cow Creek service area would benefit more than members living in other states. This, again, does not seem to be fair. The Housing Assistance Program is presently available to members of the Tribe. Many elders, including me, have already been provided this assistance by the B.IA. I do not feel that this program should be as heavily funded as outlined in the disbursement plan.

I am sorry that so much has already been spent on Economic Development. I have always opposed the Evergreen Motel property---and still do. After three years, we have nothing to show for expenses in this bracket. Due to the economy and unemployment in our area, we need good stable business ventures---something that would employ people and pay dividends to Tribal membership. I cannot see this happening with the Evergreen Motel.

H.R. 3214 - Amendments:

I disagree with Amendment No. 1. At the present time there is some concern regarding the 1978 and 1981 by-laws. A decision from a law-suit in U. S. District Court, in Eugene, Oregon, will decide this issue. At present there is no Constitution. If this amendment passes the plan would leave no power whatsoever with the Tribal Council---it would go back to the Board of Directors and make them the "sole governing body" of the Tribe.

Amendments 2 and 3 do not follow Public Law 96-251 which mentions members should be lineal descendants of those persons living in the area prior to the signing of the Treaty in 1853. To me, this means, all persons proving ancestry should be included in judgment rolls. Interrogatory 14 retains persons who are not

eligible and does not allow admission of those who are not on the list.

Again, I must say, I still oppose the disbursement plan and the amendments that have been made to H.R. 3214. I believe in fairness and equal rights for all members who are true lineal descendants of the Cow Creek Band of Umpqua Tribe of Indians.

I want to thank the Committee for allowing me to speak here today.

Respectfully submitted,

Janey LaChance Heussner

August 6, 1986

Janey LaChance Heussner

PREPARED STATEMENT OF APRIL ELLEN HOWREN

P.O. BOX 276
MYRTLE CREEK, OREGON 97457

Member, Cow Creek Band of Umpqua Tribe of Indians

In opposition of H.R. 3214 and amendments

August 6, 1986

I am a Dumont family descendent and I just recently became of legal, voting age. My reasoning for opposing H.R. 3214 and the amendments is a very basic one. I have voting priveleges and have exercised them in civic matters. Yet, on an issue so devistatingly important to my Tribe is this Bill, the only portions which were sent out to the entire membership in the newsletter was the Distribution Plan portion and the proposed amendments. It is my understanding that H.R. 3214 is being presented as the Tribe's proposed legislation. How can this be true, when it has not gone out in written form, as a whole, to the membership? I have not had the opportunity to utilize my voting rights, to say if this is what I want or don't want.

I object to the amendment pertaining to allowing certain benefits being given to non-tribal members. Not because these people are not deserving, but because they are deserving of much more. If these people are declared eligible to recieve certain benefits, then they are deserving to be enrolled and recieve full benefits. More than benefits, they are deserving of the identity of their birthright, the same as I am. And further, the term non-tribal member is very demeaning, the term should be UNenrolled tribal member.

The Board of Directors are said to be the sole governing body of the Tribe. This means that eleven people control the destiny of well over seven hundred people. I have an active vote and even the choise of an absentee ballot in civic matters, but not in those of my Tribe. If I am to cast my vote at trial level, I am required to attend a meeting. That is, on matters brought to the vote of the general council. Because I feel my voting priveleges have been violated and because H.R. 3214 has not been presented to the Tribe, I strongly object to its passage.

Respectfully submitted by,

April Ellen Howren

April Ellen Howren

PREPARED STATEMENT OF EILEEN MARIE HOWREN
P.O. BOX 276
MYRTLE CREEK, OREGON 97457

Member, Cow Creek Band of Umpqua Tribe of Indians

In opposition of H.R. 3214 and amendments

August 6, 1986

Even though I am seventeen, not of voting age, I believe I know enough to form an opinion. I have been involved in tribal business, meetings, Pow Wows and events for a number of years.

I do not like what I see happening to my Tribe, to the people I love. From what I have read and understand of H.R. 3214, it would be the most devistating weapon of all.

All I ask is that each and every member be treated the same. I don't feel any one person is more deserving than another. I ask you to amend H.R. 3214 to do just this, treat each member equally.

Respectfully submitted by,

Eileen Marie Howren

PREPARED STATEMENT OF MARY DUMONT HOWREN
P.O. BOX 276
MYRTLE CREEK, OREGON 97457

Member, Cow Creek Band of Umpqua Tribe of Indians

In opposition of H.R. 3214 and amendments

August 6, 1986

I object to this legislation for the following reasons.

Section 2 defines certain terms. The term "tribe's governing body" shall be determined by the Tribe's governing documents. At present, those documents state the sole governing body to be the Board of Directors. In the Litigation Law (P.L. 96-251), the governing body was stated to be the Council, the voting membership. This law provided for voting privileges and equal voice.

Section 3 refers to the distribution of funds awarded. Why then is this legislation differing so drastically from the original legislation and concepts which led to this point? If this legislation was adequate to get us into the Court of Claims and to pave the way, why is it not good enough to be the basis of distribution of funds?

Section 5 deals with Tribal membership and is confusing and misleading. The analysis states it is no longer required that a member trace ancestry back to the time of the signing of the 1853 Treaty. There are certain requirements that began as the very foundation of this Tribe. If the history of P.L. 96-251 were reviewed, this would be apparent. P.L. 96-251 was a very simple piece of legislation, yet it gave form and membership guidelines for the Tribe and it gave a basic definition of the governing body. This legislation was written with the full knowledge and approval of those who chose to be involved. I cannot make the same statement concerning the Recognition Law (P.L. 97-391) and of H.R. 3214. H.R. 3214 further qualifies membership. How many members know if their names appear on the roll published in Interrogatory numbered 14? Not many, few have access to that information. H.R. 3214 changes the established pattern, descendency has always been a major factor in determining membership.

Section 6 provides certain priveleges and guidelines for non-tribal members. The very term "non-tribal" member is misleading. The true term should be UNenrolled member. If H.R. 3214 establishes that certain people to be eligible for certain benefits, provided they follow a certain set of criteria, why not establish a procedure for non-tribal members to become ENrolled members? This appears to establish the criteria that some are more equal than others, even though many share the same lineage.

I feel that a pattern has developed to change the very structure of the Tribe. The Litigation Law (P.L. 96-251) may not have been without flaws, but it gave form and equality. The Recognition Law (P.L. 97-391) changed earlier standards long established. And now, H.R. 3214 doesn't just change the foundation, it totally rebuilds it. I don't understand the need for each respective piece of legislation to change the format of the Tribe.

My real concern is that if H.R. 3214 becomes law, in its present form, it descriminates, it qualifies, it redefines the Tribe's foundation, it is unequal, unfair, unjust and is detrimental to the Tribe it is meant to serve. If H.R. 3214 were amended to do what it was meant to do, equally and justly, with the full knowledge of the entire membership, then I would withdraw my objections, but not until.

Respectfully submitted by,

Mary Dumont Howren

PREPARED STATEMENT OF EMMA LOU LaCHANCE

Altho I am unable to attend the Senate Select Committee on Indian Affairs Hearings, regarding H.R. 3214 (cited as the "Cow Creek Band of Umpqua Indians Distribution of Judgment Funds Act".), introduced August 1, 1985, by Congressman Jim Weaver; I respectfully request that this, my written testimony be made a part of the official record of these hearings.

My name is Emma Lou LaChance. I live on Chadwick Lane in Myrtle Creek, Oregon. My address is P.O. Box 1914, Myrtle Creek, OR 97457. I am married to David LaChance, A direct lineal descendant of the Cow Creek Band of the Umpqua Tribe of Indians and a current enrolled member of the Cow Creek Tribe. I have been associated and directly involved with my husband's people for over 35 years. I have also been involved with other areas of Native American interests for quite some time.

I wish to state that my reasons for submitting testimony at this hearing is simple. I am totally and completely OPPOSED to Committees consideration, let alone a recommendation for the passage of legislation of this nature.

I very much support the six proposed amendments submitted by the Interim Committee of the Cow Creek Indians, and request that this Committee use these amendments in changing H.R. 3214 into a fair and equitable law.

I would like to state as a matter of record that: I was personally involved with much of the geneological and historical research that was accomplished by the Cow Creek Tribe for the

preparation of Public Law 96-251. P.L. 96-251 was the enabling legislation passed by Congress and signed into Law by former President Carter on May 26, 1980, which allowed the Cow Creek Tribe to file a claim against the Federal Government. The "Judgment Distribution" legislation (H.R. 3214) is a direct result of P.L. 96-251.

Many Cow Creek Tribal meetings were held around the kitchen table in our home at Surprise Valley and in Myrtle Creek, Oregon. The Idea of a restoration and/or recognition Bill was formed at that table. I want to clarify, that when we began working on the idea of recognition and a possible treaty violation claim for the Cow Creek Tribe, it was decided then and there that if anything was accomplished for the tribe, it would be for the benefit of ALL of the descendents of the Cow Creek Indians that had never gone to the reservation and who had stayed in the Cow Creek valley. It was also decided at that time that anything and everything that was gained would be shared EQUALLY by the Cow Creek people. That idea has always been the belief of the Cow Creek people.

I feel that the United States Congress would be wrong if they pass this legislation (H.R. 3214); which would allow persons claiming to be a lineal descendent of the Cow Creek Indians, when they are NOT lineal descendents, and/or persons that were taken or placed on a reservation, lived on the reservation and/or received benefits from the Federal Government, to qualify as Cow Creek Indian descendants as defined in the United States Claims Court Case, Docket Number 53-81 L. The passage of H.R. 3214

WOULD ALLOW A GREAT MISCARRIAGE OF JUSTICE TO HAPPEN!! The passage of H.R. 3214 would also DEPRIVE DIRECT LINEAL DESCENDANTS WHO LEGALLY QUALIFY Pursuant to P.L. 96-251 their rightful share of the Judgment Award!

I am very concerned that the an attempt is being made to deceive Congress and this Committee by certain persons who are listed (UNLAWFULLY) on the Cow Creek Tribal Membership list that these same people submitted to the BIA and that this list is presently being used by the Department of the Interior to identify and to provide Federal benefits to those persons listed as being Cow Creek Indian Descendants! Those persons are not Cow Creek descendents and further, they are using records and stories that they themselves have fabricated and prepared over the past 20-30position of power with the aid of a corrupt and dishonest Attorney, and an alleged expert witness who apparently will testify for the group that pays the most. They have accomplished this with many threats, intimidation, special treatment, and even possible payoffs. Congress cannot and should not allow these corrupt people, or anyone else who is not entitled, to benefit from this judgement award or any other Federal benefits, for that matter, especially at the expense of the lawful and legitimate Cow Creek Lineal Descendants.

During the last 3-4 years, I have personally witnessed the administration of over $1,000,000.00 by the above referenced people acting as the governing body of of the Cow Creek Band of the Umpqua Tribe of Indians. Very few Cow Creek Indians have benefited from any of that money. I feel that if any portion of

the judgment award, including the twenty percent that would be targeted for Tribal programming, is placed in the hands of these People (as proposed by H.R. 3214), it would line a few well chosen pockets. If H.R. 3214 were to receive Congressional approval and was signed into Law, once the funds are released by the Secretary of the Interion (as proposed in the legislation), the Federal Government is no longer liable with respect to any distribution of funds by the tribe according to Public Law 98-64, Section 3 passed August 2, 1983. Corruption and misuse of Cow Creek Tribal money is evident, alive and well, and flourishes within the present Cow Creek Administration.

Once the judgment award money is placed in a Tribal account for utilization by the Tribal governing body, another Federal Statute, Public Law 98-473, Title I, Section 101(c), approved October 12, 1984, would allow the governing body to use the money in any way that they wish. It's been rumored that a portion of any judgment money that is turned over to the tribe will be used to cover the costs of litigation that is currently pending against certain members of the Cow Creek Tribe and other non-tribal persons. That litigation is not a Tribal issue, even tho the defendants in the suit are attempting to make it look like it is. It is not fair that the entire membership of the tribe be held responsible for the mistakes of a few people who are claiming to be Cow Creek Indians and other non-indian persons.

I wish to go on record at this time VERY STRONGLY OPPOSING H.R. 3214 with this statement:

UNLESS THIS COMMITTEE UTILIZES THE PROPOSED AMENDMENTS SUBMITTED BY THE INTERIM COMMITTEE OF THE COW CREEK BAND OF UMPQUA INDIANS, THE ONLY FAIR, EQUITABLE, AND JUSTIFIABLE DISTRIBUTION OF THE COW CREEK JUDGMENT AWARD IS FOR THE SECRETARY TO DISTRIBUTE A PER CAPITA PAYMENT IN A SUM AS EQUAL AS POSSIBLE TO EACH AND EVERY QUALIFIED DESCENDENT OF THE COW CREEK BAND OF THE UMPQUA TRIBE OF INDIANS AS DEFINED IN PUBLIC LAW 96-251 AND THE UNITED STATES CLAIMS COURT DOCKET NUMBER 53-81 L.

I wish to thank the Senate Select Committee on Indian Affairs.

Respectfully Submitted on 8/6/86

Emma Lou LaChance

Emma Lou LaChance

PREPARED STATEMENT OF CATHERINE MARIE MOORE
P.O. BOX 313
CANYONVILLE, OREGON 97417

Member, Cow Creek Band of Umpqua Tribe of Indians

In opposition of H.R. 3214 and amendments

August 6, 1986

I remember the first Pow Wow I attended, I was an adult then. For the first time, I knew what I had missed during my earlier years. I was so proud of my people, I was thrilled by the drums, I was excited by being a part of writing the new history of our Tribe. What once was a dream, I was to be a part of making reality. I love my people, my Tribe dearly and know the trials we have suffered.

Is H.R. 3214 going to be yet another trial to be suffered? I was proud of our Litigation Law. This Law was developed at Tribal level and many people had input and all shared voting power of approval in its wording. I wish I had been able to be equally as proud of our Recognition Law, but I could not. We, lowly Tribal members had no part in the wording of this legislation. It was written for us by others.

H.R. 3214 is to our Tribe what the A bomb was to Hiroshima. It destroys the core of our people. It redefines membership and qualifies it in such a way that blood descendents could well be denied membership, at the whim of those in command. This Bill descriminates. This Bill's terminology of non-tribal members is insulting and demeaning.

I love all my people and do not wish them to suffer further hurst, due to legislation being passed without their full knowledge and the full implications being explained to them.

If H.R. 3214 could be rewritten in such a way, to preserve the intents of the past, at a time that they had input and not hurt and destroy all that has been achieved, I would be supportive, but not until.

Respectfully submitted by,

Catherine Marie Moore

Catherine Marie Moore

PREPARED STATEMENT OF MARGARET ANN MULHOLLAND
LOU GRAY DRIVE
CANYONVILLE, OREGON 97417

Member, Cow Creek Band of Umpqua Tribe of Indians
In opposition of H.R. 3214 and amendments
August 6, 1986

I am Margaret Ann Mulholland, an enrolled member and a descendent of the Dumont family. I have managed to gain access and to have read H.R. 3214, and the latest proposed amendments.

I object strongly to H.R. 3214, in its entirety because only portions of it have been published in the tribal newsletter.

I object to the proposed amendments, because they virtually change nothing and give nothing. Changing the wording pertaining to the "tribe's governing body" is a play of words, because the present governing documents state the Board to be the sole governing body. The previous wording was just plainer and more honest.

The second proposed amendment is even more misleading than the first. It is very confusing. How can membership in the Tribe be determined as provided in the Tribal Constitution, By-laws, and Membership Ordinance. The Tribe has NO Constitution, the By-laws are currently in question and to my knowledge, the Tribe has NO Membership Ordinance.

I feel a deliberate play of words has been made, with little or no difference from the original wording being made. Therefore, I strongly object to H.R. 3214, and the proposed amendments.

Margaret Ann Mulholland

Margaret A. Mulholland

PREPARED STATEMENT OF LUPE MARIA NEWTON
MYRTLE CREEK, OREGON 97457

NON-TRIBAL Member, Cow Creek Band of Umpqua Tribe of Indians

In opposition of H.R. 3214 and amendments

August 6, 1986

My children, myself and others are referred to in H.R. 3214 as non-tribal members because we are unenrolled. At one time, my children were accepted on the Supplemental Tribal Roll. I was accepted, pending the reciept of my birth certificate. You see, I was born at home and had to go through quite alot of hassle just to get my birth certificate. Months after the Recognition Law (P.L. 97-391) was passed, my children's names were removed from the roll. I was told that because we were actively enrolled on or before December 29, 1982 we could not now be enrolled. My children and I share the same bloodlines as many currently enrolled members.

If H.R. 3214 can change the membership qualifications of the Tribe, then why can't H.R. 3214 make provisions that people like myself and children can become actively enrolled. The fact that H.R. 3214 offers NON-tribal members eligibility for certain benefits is a pat on the head and is nothing compared to lost identity and dignaty.

This is the area of H.R. 3214 which concerns me the most. Obviously, since I am not duly enrolled, I have little or no say at tribal level. However, I still object to its present form, because it is unfair, unequal and sets up special considerations for a few.

Respectfully submitted by,

Lupe Newton

Lupe Maria Newton

PREPARED STATEMENT OF DELBERT D. RAINVILLE
Member, Cow Creek Band of Umpqua Tribe of Indians
In opposition of H.R. 3214 and amendments

AUGUST 6, 1986

MR. CHAIRMAN AND MEMBERS OF THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS:

My name is Delbert D. Rainville. I reside at 1399 Quail Lane, Roseburg, Oregon 97470. I am a member of the Cow Creek Band of the Umpqua Tribe of Indians---presently enrolled on the membership roll being used by the Tribe. I am also a direct lineal descendant of the Cow Creek Band of Indians who lived in and occupied the lands described in the Treaty of September 19, 1853 between the Cow Creek Indians and the United States government. I am unable to attend the hearings scheduled for testimony before this Committee and I wish to request that my submitted written testimony be made a part of the official record of the hearings. Also, I wish to go on record as opposing H.R. 3214---the bill introduced by Congressman Jim Weaver and cited as the "Cow Creek Band of Umpqua Indians Distribution of Judgment Funds Act".

Having studied the Tribe's judgment fund plan quite extensively, I feel that it will benefit too few people. Approximately seventy-five pre-defined and determined Elders, and I am one of those seventy-five Elders, would receive a one time payment of $5,000.00. At the time of final payment to the seventy-five Elders, the $500,000.00 seed money would be split four ways and put into other programs. Most of those programs would be duplication of now existing programs that the Tribe received and that are provided as a result of Federal recognition. The vast majority of the Tribe,

people between the ages of twenty years and fifty years old, would never benefit from the judgment award at all. I also want to stress that I feel very strongly that "every qualifying Cow Creek Tribal member has a constitutional right to decide how, when, and why his individual share of the judgement fund award should be used".

I oppose the membership requirements of H.R. 3214 because they are different than the definition of Tribal membership in the law that allowed the Cow Creek Indians to file a claim against the United States and would allow persons not qualifying as direct lineal descendants and persons not even Cow Creek Indians to benefit from the judgment award.

I am strongly in favor of, and will support, a plan for legislation that would include a per capita payment for all lawfully qualified Cow Creek lineal Tribal descendants as defined in existing Public Law 96-251.

In closing, I will again stress my opposition to H.R. 3214. In my opinion, based on the past track record, I feel that performance in the future would follow the same, if not, a worse pattern.

I thank the Committee for allowing my written testimony to be made a part of the official record.

Reepectfully submitted,

Delbert D. Rainville

August 6, 1986

PREPARED STATEMENT OF GARLAND E. RAINVILLE
Member, Cow Creek Band of Umpqua Tribe of Indians
In opposition of H.R. 3214 and amendments

AUGUST 6, 1986

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE AND LADIES AND GENTLEMEN:

My name is Garland E. Rainville. My address is 6303 Flournoy Valley Road, Roseburg, Oregon 97470. I am 56 years old and am an enrolled member of the Cow Creek Band of the Umpqua Tribe of Indians. I am a descendant of Adelaide Petit Rainville. I am unable to attend the hearing regarding H.R. 3214 and amendments. Therefore, I am submitting this written testimony and request that my opposition to the bill be recorded.

H.R. 3214 - Disbursement Plan:

I must state that I am completely opposed to H.R. 3214, cited as the "Cow Creek Band of the Umpqua Indians Distribution of Judgment Funds Act", and that I was also strongly opposed to the plan for distribution of the judgment funds which was prepared by the Judgment Fund Committee under the direct supervision of the Board of Directors of the Cow Creek Band of the Umpqua Tribe of Indians, and more specifically, those persons who authored H.R. 3214 for the purpose of making the assets of the Cow Creek Tribe that intends to allocate all of the judgment award funds to the Cow Creek Tribe.

An Elderly Assistance Program might have a chance of working under proper structure. I ask you: why a $5,000.00 one-time cash payment? Why not a $1,000.00 payment? This would allow 5 times as many persons to receive a payment each year. Why not make this a perpetual program? Why discriminate against anyone who is not 50 years old on December 31, 1985? With this cut-off date, anyone above school age will never receive any cash payment. What I am

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saying is this: "If my three sons, who are under the age of 50 years, and will never become eligible to share equally as I have, then I should not be eligible for a cash payment".

In reference to the other proposed programs that would be available to Tribal members according to this legislation and the Tribal Distribution Plan, the majority of the programs are obtainable from other sources. The plan proposed by H.R. 3214 is not equal, is highly prejudiced, and will make second-class citizens of more than one-half of the Cow Creek Tribe in defining a service area for Cow Creek Tribal members.

H.R. 3214 and the proposed amendments both place absolute total power, as well as complete control over all Tribal assets, into the hands of the Tribal Board of Directors by defining the Board as the "sole" governing body of the Tribe. The Board of Directors consists of 11 persons and this legislation would allow these 11 persons to make critical and important decisions and set policy that ultimately would affect more than 700 people. There is no check and balance system or provisions or means available that is incorporated in this legislation or that is a part of the existing Tribal governing documents, now being used to operate and govern the Cow Creek Tribe, which allow for issues decided by the "powerful" Board, to be over-turned by the total Cow Creek membership of the Tribal Council. I, personally, served on the Board of Directors during the period 1977 to 1984. I dislike to admit this, but I knew very little and was told even less about what was going on during this time.

I will close my testimony with this statement: "I vigorously oppose H.R. 3214 and amendments, the plan of the Board of Directors

of the Tribe, and/or any plan that is formulated or proposed that would allow 100% of the judgment award funds to be placed in the hands of the Cow Creek Tribe, or the Board of Directors, without a clearly defined protective safety provision to guarantee that the award funds could never be touched or controlled by just the Board of Directors.

I totally favor and will support any plan that provides for a fair and equal per capita distribution which is controlled and can be monitored which would include every eligible qualified Cow Creek Indian lineal descendant as defined in Public Law 96-251---"The Cow Creek Land Claims Enabling Act" of May 26, 1980.

I wish to thank the Committee for the consideration and acceptance of my written testimony as submitted.

Respectfully submitted,

Garland E. Rainville

August 6, 1986

Garland E. Rainville

PREPARED STATEMENTS OF YOLANDA RAMIREZ AND JOYCE SERTAIN
MYRTLE CREEK, OREGON 97457

Member, Cow Creek Band of Umpqua Tribe of Indians

In opposition of H.R. 3214 and amendments

August 6, 1986

I just want to say that I do not like legislation being written that we, as enrolled members have not had the opportunity to vote on, just a small part of it. From what I have been able to learn, H.R. 3214 is very damaging to our Tribe. It descriminates and serves the needs of select groups, rather than each and every member, equally.

I will continue to object to H.R. 3214 in its present form. If it could be changed, with the full knowledge and approval of the tribal membership, then I would withdraw my objections.

Respectfully submitted by,

Yolanda Ramirez

Yolanda Ramirez

I want to state simply that I object to H.R. 3214 because it descriminates. I did not approve of the basic Distribution Plan when it was presented. I don't always understand everything that is happening. But I understand enough to realize that later, when some of the amendments were printed in the newsletter, this Bill covered more than just the distribution of funds.

All I ask is that my people, each and every one, be treated equally and fairly. If H.R. 3214 can be made to do that, then I would not object.

Respectfully submitted by,

Joyce Sertain

Joyce Sertain

PREPARED STATEMENT OF DENNIS J. WHITTLESEY

Tribal Attorney
Cow Creek Band of Umpqua Tribe of Indians

In support of H. R. 3214

My name is Dennis J. Whittlesey. I am attorney with the law firm of Keck, Mahin & Cate, and practice law in Washington, D.C. Among my clients is the Cow Creek Band of Umpqua Tribe of Indians.

I want to briefly address three issues which have arisen over the past several days immediately prior to this hearing.

First, I represented the Tribe in the litigation the settlement of which resulted in the award to the Tribe of the judgment fund which H. R. 3214 would distribute. That case is known as Cow Creek Band of Umpqua Tribe of Indians v. United States, No. 53-81L, in the United States Claims Court. During that litigation, we developed extensive family oral histories, detailed land and resource utilization studies and an expert witness report. All of these materials demonstrated the Tribe's exclusive use and occupancy of its aboriginal lands during the treaty epoch, as well as continuous use and occupancy of the same lands through the 19th Century and up to the present time. Just as Congress recognized in 1982 that the modern Tribe is the political continuation of, and successor in interest to, the aboriginal Cow Creek Band of Umpqua, we developed the evidence on that issue.

Today, the Department of the Interior questions the legitimacy of this statement. However, the record before this Congress in 1982 and the U. S. Claims Court in that litigation speaks for itself.

Second, the United States District Court for the District of Oregon recently entered its opinion in a case which I litigated last February. Robert L. Buschmann, et al. v. Cow Creek Band of Umpqua Tribe of Indians, Inc., et al., Civil No. 85-6137E (July 28, 1986). There may be some confusion and I thought that a brief clarification would be in order.

The Tribe was not a party to this litigation, but rather the plaintiffs sued the defunct tribal corporation which served the membership prior to federal recognition on December 29, 1982. We viewed it as critical that nothing be done during this litigation which would even come close to waiving the Tribe's sovereign immunity, and I carefully restricted the evidence and testimony so that they were confined to corporate matters. I believe that this is clear from the Opinion, copies of which have been furnished by me to the Committee staff. There are references to lack of evidence concerning tribal activities with regard to the Official Roll, and I would confirm that no such evidence was presented -- not because it did not exist, but rather for the reasons outlined above.

The importance of the Opinion for the purposes of the pending legislation is that the Court concluded that 1980 Roll was lawfully compiled according to the corporate procedures then controlling. Nothing was litigated concerning the Tribe's dealings with that Roll, although this matter was discussed in detail during Congressional consideration of the Tribe's Recognition Act in 1982.

Finally, the Oregon court looked at past written statements of Robert L. Buschmann concerning the activity of the tribal governing body in general, and its Chairperson and outside Ethnohistorian Consultant, in particular. Those statements were adjudicated false and libelous, yet Mr. Buschmann has repeated them in testimony he has submitted to the Committee staff for this hearing. Not only are his statements proven false, but they were submitted in direct violation of the Court injunction barring him from making them in the future. In light of these facts, I do not believe that this Committee should give any weight to his statements and propose that Mr. Buschmann's testimony not be included in the hearing record for today's proceedings.

If any questions remain concerning either of these matters, I am available to answer them. Thank you.

PREPARED STATEMENT OF SUE M. SHAFFER

Chairperson
Cow Creek Band of Umpqua Tribe of Indians

In support of H. R. 3214

Before The
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

August 6, 1986

My name is Sue M. Shaffer. I reside at 581 Fairchild Street, Canyonville, Oregon. I am Chairperson of the Cow Creek Band of Umpqua Tribe of Indians and submit this testimony in that capacity.

My primary purpose today is to detail how the Tribe's plan for distributing the Claims Court judgment fund was developed and how tribal concensus on the plan was determined. The tribal plan is now embodied in H. R. 3214, and it truly reflects the sentiments of the Tribe.

When our Claims Court litigation was settled for $1.5 million, the Tribe's Board of Directors recognized that there was a great need to develop a distribution plan which would (a) insure the future of the Tribe while simultaneously (b) serving the desires of the membership. Living in Oregon, we have seen many tribes squander their tribal assets, and our

elected tribal officials were concerned that the same thing not happen to us.

Therefore, the Board decided to appoint a Judgment Fund Committee to develop a distribution plan on the basis of the foregoing considerations. Ben Rondeau of Grants Pass, who is Vice Chairman of the Tribe, was appointed Chairman of the 5-person committee.

The total Committee project consumed approximately nine months, with five of those months being very concentrated in this activity. The Committee solicited written comments from the general membership, and I know that every comment received was read by the Committee and taken into consideration in the development of the plan. During this process, several major elements were modified as a result of comments received in this manner.

The Committee met on several occasions with the tribal attorney and tribal historian, and three representatives of the Bureau of the Indian Affairs attended one very important meeting on February 9, 1985, when the plan was in essentially final form.

In addition to these sessions, the Committee held public meetings to which every tribal family was requested to attend and participate, and many did. These meetings were also attended by the tribal attorney and historian and each lasted

for hours. We also took steps to discuss the plan during its development with tribal members not living in Oregon and even had our attorney and Committee Chairman Rondeau meet with one large group of tribal members in Sacramento, California.

During this period, the draft plan was forwarded to the Department of Interior both for informational purposes and to elicit comments.

The product of all of this activity was the judgment plan represented by H. R. 3214. Although I had nothing to do with development of the plan, I am proud of the Committee and our Tribe for the ultimate proposal, as it represents an unselfish decision to build for the future and forego short term dollars in individuals' pockets. Let me say that I personally opposed one portion of this plan, but realized that the tribal sentiment was in support, as evidenced by the final tribal vote which will be discussed in the following paragraphs.

Once the Committee finally presented its plan to the Board, we sent a copy of the plan to the membership to solicit final comments. With this, a final meeting was conducted on May 19, 1985, for a discussion and tribal vote on the judgment plan before this Committee. Present at that meeting were the entire Judgment Fund Committee, the tribal attorney, the tribal historian and representatives of the Bureau of Indian Affairs, who were invited for the specific purpose of supervising the

meeting and tribal vote. The entire meeting of May 19 was conducted with BIA officials present, and a BIA representative supervised the secret balloting and counting of those ballots.

The results of that ballot were as follows: 78 for the plan and 16 opposed.

Since that time, I have discussed the plan with many members of the Tribe and continue to find that it represents the overwhelming sentiment of the tribal membership. Although any dissent expressed by adverse tribal witnesses here today is the voice of a tiny minority, we attempted to address some of their primary concerns -- as well as those raised by the Department of the Interior -- through amendments in the House. At all times relevant to the development of this plan and this legislation, we have worked to address comments of all interested individuals and I believe that H.R. 3214 as it stands today is a good bill and represents my Tribe's best hope for future self-sufficiency.

I want to thank the Committee for the opportunity to appear and testify on behalf of the Tribe, and we look forward to a prompt and favorable consideration of the bill.

PREPARED STATEMENT OF JOHN A. YOUNG

JOHN A. YOUNG
RT. 1 BOX 287 A
MYRTLE CREEK, OREGON 97457

Member, Cow Creek Band of Umpqua Tribe of Indians

In opposition of H.R. 3214 and amendments

August 6, 1986

I strongly urge all involved to investigate the past legislative history of this Tribe. I and many others helped write our original Litigation Law (P.L. 96-251). We insisted in its simple language and meaning. Yet, this simple piece of legislation gave our Tribe form, identity, membership qualifications, and form for our governing body.

The Recognition Law (P.L. 97-391) was worded differently and in such a way as to lead to interpretations as to the guidelines of tribal membership.

Now, H.R. 3214 continues what the Recognition Law began, only far more blatantly. It changes the fundamental requirements for membership. It no longer requires that people prove descendency to those who were residents at the time or before the signing of the 1853 Treaty. Why? Are there some among us without this proof? It provides for non-tribal members. If non-tribal members are entitled to certain benefits, why not to all, including enrolment?

I see a pattern, developed along the way to serve the interests of a few, rather than the majority. The Litigation Law was developed in open meetings and anyone attending had input. The Recognition Law was written by others, for "our benefit", but without our full knowledge and changes were made. Now, H.R. 3214 has been written. We were told in a tribal meeting, this was simply a Bill to provide for the distribution of the judgment funds. Through means other than my tribal governing body, I gained access to the entire Bill. It is NOT just the distribution plan or just the amendments, as partially printed in our newsletter.

As long as H.R. 3214 breaks new ground and changes accepted Tribal procedures, I will object. As long as H.R. 3214 serves a given few, rather than each and every member equally, I will object. As long as legislation is being written without the full knowledge and support of the membership, I will object.

If these things could be corrected, I would consider removing my objections.

Respectfully submitted by,

John A. Young

AMENDMENTS TO H.R. 3214 ADOPTED BY THE HOUSE OF REPRESENTATIVES

SEC. 6. ELIGIBILITY OF NON-TRIBAL MEMBERS.

(a) Notwithstanding any provision of this Act, non-tribal members shall be eligible to participate in the programs established pursuant to section 4(c) and (d) of this Act if they are within that group of persons described in section 4(a) of the Act of May 26, 1980 (P.L. 96-251) and satisfy the enrollment requirements of Section 6 (b) of this Act.

(b) In order to qualify as an eligible non-tribal member under section 6(a), non-Tribal members must submit an enrollment application to the tribe within 180 days of the date of this Act in which they must establish that they satisfy the criteria of section 6(a). All decisions on such application shall be made by the Tribe, Provided, That any applicant who has been denied eligibility by the Tribe shall have the right to appeal to the Secretary of the Interior.

AMENDMENTS TO H.R. 3214 ADOPTED BY THE HOUSE OF REPRESENTATIVES

Section 5 of the Act of December 29, 1982 (P.L. 97-391) is amended to read as follows:

(a) The members of the Cow Creek Band of Unpqua Indians shall consist of every individual named in the Tribal roll that was published in the Tribe's answer to the United States Interrogatory numbered 14 in the United States Claims Court docket numbered 53-81L, as supplemented through additional enrollments through December 29, 1982, and descendants of any individuals named in such roll born on or before the date of enactment of this Act. Thereafter, membership in the Tribe shall be determined as provided in the Tribal Constitution, By-laws, and Membership Ordinance.

(b) Membership in the Tribe pursuant to subsection (a) shall not entitle an individual who shared in the distribution of funds under the Act of August 13, 1954 (25 U.S.C. 564 et. seq.) or the Act of August 13, 1954 (25 U.S.C. 691 et. seq.) to participate in any distribution of funds pursuant to a judgment under the Act approved May 26, 1980 (94 Stat. 372).

tion of an international early warning system and "SWAT team" for nuclear emergencies.

It is not too early, however, to draw more philosophical lessons. Hubris and high technology do not mix. Silence and secrecy are a deadly potion when it comes to nuclear power. Just as the Soviets have suffered the forseeable consequences of these combinations, we must be on guard to prevent the same mixture from threatening the safety of our own nuclear powerplants, especially Department of Energy nuclear facilities.

DOE nuclear facilities are self-regulated. They are not subject to the jurisdiction of the Nuclear Regulatory Commission. DOE does not involve the Federal Emergency Management Agency in emergency planning in the event of a severe accident with offsite consequences. Yet, a number of DOE facilities lack containment buildings which the NRC deems an important safety measure to mitigate a potentially serious accident.

Tomorrow, my subcommittee will hold a hearing on the implications of the Chernobyl accident for DOE facilities. I urge my colleagues to make sure that DOE is not imperiling public health and safety in its rush to make more nuclear weapons.

PUBLIC SERVICE RECOGNITION WEEK

Mrs. SCHROEDER. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 609) to designate May 5 through 11, 1986, as "Public Service Recognition Week," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore (Mr. MONTGOMERY). Is there objection to the request of the gentlewoman from Colorado?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Ms. OAKAR. Mr. Speaker, I would first like to thank my chairman of the Committee on Post Office and Civil Service, WILLIAM FORD, and the chairman of the Subcommittee on Census and Population, ROBERT GARCIA, for their cooperation and assistance in bringing to the House floor today, House Joint Resolution 609, "Public Service Recognition Week."

Public employees have made immense contributions to this country in technological research, health care, education, crime prevention, fire protection, national defense, and conservation. Of the 54 American Nobel laureate recipients, 37 have been public employees. Public employees have invented the CAT scan, plastic wrap, Teflon, the laser, solid state technology, sonar radar, and dehydrated and frozen foods.

Public employees at the local, State, and Federal levels provide invaluable services to all Americans. Public employees at the Federal level protect our borders, ensure that our Social Security checks are processed on a timely basis, deliver our mail, conduct essential medical research, and expand the frontiers of space. At the local and State level, public employees teach our children, protect our neighborhoods, enforce building and safety codes, plan our roads and highways, and provide a clean and healthy environment. These men and women have risked, and in some instances given, their lives while serving the public.

Too often the importance of their public service and their contributions to the security and progress of our Nation is forgotten, taken for granted, or ignored. Rather than receiving the praise and appreciation they deserve, public workers are too often victims of unfair criticism.

House Joint Resolution 609 is a simple "thank you" to the workers whose jobs we depend on in every facet of our lives. Clearly, their dedication and skill have made our country a better place to live, and they deserve recognition. The resolution also encourages Governors and local officials to praise public workers in a special way.

For the past 5 years, the Public Employees Roundtable, a consortium of public employee groups, has presented merit awards at their annual "Breakfast of Champions." Rather than singling out individuals for their fine achievements, the roundtable has given out awards to government units, displaying the cooperation which marks the effective relationship between our local, State, and Federal Governments. This year, we would like to commemorate the celebration by recognizing the fine work public employees perform through this congressional resolution.

In closing, I would like to thank my chairman, WILLIAM FORD, the chairman of the Subcommittee on Census and Population, ROBERT GARCIA, and my colleagues who cosponsored this resolution for their assistance.

Mr. WOLF. I rise in suppot of House Joint Resolution 609 and urge its adoption today. I am a cosponsor of this legislation and commend Ms. OAKAR's leadership and initiative in introducing this measure to recognize the important jobs performed by our Nation's public servants.

I urge my colleagues to take a few moments this week to let the public servants you encounter each day know of your appreciation for the work they do. Whether it's the mailman, the police officer, a teacher, or a Federal employee here in the Nation's Capital, take a moment to recognize the contribution they make to the quality of life in our communities, cities, States, and Nation.

Again, I urge my colleagues to support this legislation, and I want to publicly thank the millions of individuals in the Nation's public work force for the important jobs they perform in keeping this country strong and free.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. Res. 609

Whereas public employees at all levels of government have made contributions deserving of national recognition and appreciation: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That May 5 through 11, 1986, is designated "Public Service Recognition Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mrs. SCHROEDER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the joint resolution just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, the Chair announces that he will postpone further proceedings today on both motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken on Wednesday, May 7, 1986.

COW CREEK BAND OF UMPQUA INDIANS DISTRIBUTION OF JUDGMENT FUNDS ACT

Mr. WEAVER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3214) to provide for the use and distribution of funds awarded to the Cow Creek Band of Umpqua Indians in U.S. Claims Court docket numbered 53-81L, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3214

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Cow Creek Band of Umpqua Indians Distribution of Judgment Funds Act".

SEC. 2. DEFINITIONS.

For the purpose of this Act—

(1) the term "Secretary" shall mean the United States Secretary of the Interior.

(2) the term "Tribe" shall mean the Cow Creek Band of Umpqua Tribe of Indians, which was extended Federal recognition by the Act of December 29, 1982, Public Law 97-391.

(3) the term "Tribal member" shall mean any individual named in the Tribal roll that was published in the Tribe's answer to the

United States' interrogatory numbered 14 in United States Claims Court docket numbered 53-81L, and descendants of any individual named in such roll after determination of enrollment eligibility by the Tribe.

(4) The term "Tribe's governing body" shall mean the governing body as determined by the Tribe's governing documents.

(5) The term "Tribal Council" shall mean the general membership of the Cow Creek Band of Umpqua Tribe of Indians convened in a meeting open to all Tribal members.

(6) the term "elder" shall mean any Tribal member who reaches the age of fifty on or before December 31, 1985.

SEC. 3 JUDGMENT DISTRIBUTION PLAN.

Notwithstanding the Act entitled "An Act to provide for the use and distribution of funds appropriated in satisfaction of certain judgments of the Indian Claims Commission and the United States Court of Claims, and for other purposes." and approved October 19, 1973 (25 U.S.C. 1401 et seq. as amended), or any plan prepared or promulgated by the Secretary of the Interior pursuant to such Act, the judgment funds awarded in United States Claims Court docket numbered 53-81L shall be distributed and used in the manner provided in this Act.

SEC. 4 DISTRIBUTION AND USE OF FUNDS.

(a) PRINCIPAL PRESERVED; NO PER CAPITA PAYMENTS.—The total judgment fund of $1,500,000, less attorney's fees and loan with the Bureau of Indian Affairs for expert witness testimony during the land claims case, will be set aside as the principal from which programs under this Act will be funded and will be maintained by the Secretary in trust for the Tribe. Only the interest earned on this principal may be used to fund such programs. There will be no per capita distribution of any funds, other than as specified in this Act.

(b) ELDERLY ASSISTANCE PROGRAM.—

(1) From the principal, the sum of $500,000 will be set aside for an Elderly Assistance Program. A one-time-only payment of $5,000 will be made to each Tribal elder as soon after January 1, 1986, as the following conditions have been met:

(A) A mechanism exists whereby the Tribe can request the release of funds from the Secretary in order to begin payments.

(B) A list of all Tribal members who are 50 years of age or older has been compiled and reviewed for accuracy by the Tribe's governing body and a financial distribution system has been established.

(2) Payments to Tribal elders shall be made according to the following formula:

(A) Payments of $5,000 will be made to the elders by age in descending order, beginning with the oldest elder, until the interest accumulated for one year on the $500,000 has been depleted below the sum of $5,000. Any interest remaining shall carry over to the following year for distribution hereunder in the next $5,000 payment.

(B) On or before January 1 of succeeding years payments of $5,000 will continue to be made to elders in descending order by age until the interest earned in such year on the $500,000 has been depleted below the sum of $5,000. Any interest remaining shall carry over to the following year for distribution hereunder in the next $5,000 payment.

(C) The distribution process will continue each year until every individual eligible for payment under this section have received a one-time-only payment of $5,000. When all payments have been completed, the principal sum of $500,000 and any remaining interest will be distributed to other Tribal programs as provided in this Act.

(3) If any Tribal member eligible for an elderly assistance payment should die before receiving such payment, the money which would have been paid to that individual will be returned to the Elderly Assistance Program fund for distribution in accordance with this section.

(4) Any individual who feels he has been unfairly denied the right to take part in this program, and who has reached the age of fifty on or before December 31, 1985, may appeal to the Secretary.

(c) HIGHER EDUCATION AND VOCATIONAL TRAINING PROGRAM.—

(1) From the principal, the sum of $100,000 will be set aside. Interest earned on such sum will be utilized to provide scholarships to Tribal members pursuing college, university, or professional education or training. Tribal members seeking vocational training also will be funded from this program, although Adult Vocational Training funding available through a contract with the Bureau of Indian Affairs will be utilized first if an individual is eligible and there is sufficient funding in such program.

(2) When the Elderly Assistance Program under section 4(b) of this Act has been completed, the principal funding for the higher education and vocational training program shall be increased to $250,000.

(d) HOUSING ASSISTANCE PROGRAM.—

(1) From the principal, the sum of $100,000 will be set aside for a Housing Assistance Program for Tribal members. Such funding may be added to any existing tribal Housing Improvement Programs to supplement them or it may be used in a separate Housing Assistance Program to be established by the Tribe's governing body. Such funding may be used for any of the following purposes—

(A) rehabilitation of existing homes;

(B) emergency repairs to existing homes;

(C) down payments on new or previously occupied homes; or

(D) purchase or construction of new homes.

If sufficient funding is not available in a given year for purchase or construction of a new home, the governing body may direct the funding to any of the other authorized purposes.

(2) When the Elderly Assistance Program under section 4(b) of this Act has been completed, the principal funding for the housing assistance program shall be increased to $250,000.

(e) ECONOMIC DEVELOPMENT AND TRIBAL CENTER.—

(1) From the principal, the sum of $250,000 will be set aside for Economic Development and, if other funding is not available or not adequate, for the construction and maintenance of a Tribal Center. Economic development funds under this subsection may be used for the following purposes:

(A) Land acquisition for business or other activities which would benefit the Tribe economically or provide employment for Tribal members. At least 50 per centum of all individuals employed in a Tribally operated business acquired or operated under this subsection shall be Tribal members or the spouses of Tribal members as available and qualified. As new positions open or existing ones are vacated, preference will be given to Tribal members or their spouses. If insufficient numbers of qualified Tribal members or their spouses are available to fill at least 50 per centum of the positions offered, non-Tribal members may be considered for employment;

(B) Business development for the Tribe, including collateralization of loans for the purchase or operation of businesses, matching funds for economic development grants, joint venture partnerships, and other similar ventures which can be expected to produce profits for the Tribe or to employ Tribal members;

(C) Reservation activities, including forest management, wildlife management and enhancement of wildlife habitats, stream enhancement, and development of recreational areas. The Tribe's governing body shall determine what reservation activities will be funded from economic development funds under this clause; and

(D) Construction, support, or maintenance of a Tribal Center.

(2) When the Elderly Assistance Program under section 4(b) of this Act has been completed, the principal funding available for economic development and a tribal center shall be increased to $400,000.

(f) MISCELLANEOUS TRIBAL ACTIVITIES.—

(1) From the principal, the sum of $50,000 will be set aside for miscellaneous tribal activities as determined by the Tribe's governing body. Such funds shall be used to finance the following activities:

(A) Operating costs of the Tribe's governing body, including travel, telephone, and other expenses incurred in the conduct of the Tribe's affairs;

(B) Legal fees incurred in the conduct of tribal affairs, tribal businesses or other tribal activities, recommended by the Tribe's governing body and approved by the Tribal Council.

(2) When the Elderly Assistance Program under section 4(b) of this Act has been completed, the principal funding for miscellaneous tribal activities shall be increased to $100,000.

(g) EVERGREEN PROPERTY; COLLATERALIZATION OF LOAN WITH BUREAU OF INDIAN AFFAIRS.—

(1) From the principal the sum of $315,000 shall be set aside as collateral on the property known as Evergreen. The interest from such amount shall be utilized for payments on the loan property. If the Tribe's governing body determines that the interest and income together are sufficient to pay off the loan more quickly, it may commit the full interest from the $315,000 to repayment of the loan until such time as loan payments are completed or the income from the property is sufficient to complete the loan payments.

(2) When the loan has been paid or the income from the property is sufficient to pay the loan, the principal amount of $315,000 shall be redistributed to the Housing Assistance Program, Higher Education and Vocational Training Program, and Economic Development and Tribal Center Program in proportions to be determined by the Tribe's governing body.

(h) GENERAL CONDITIONS.—The following conditions will apply to the management and use of the judgment funds:

(1) The principal shall not be used. Only the interest from the funds will be used to finance tribal programs.

(2) In order to allocate principal amounts of $500,000 to the Elderly Assistance Program, $100,000 to the Higher Education and Vocational Training Program, $250,000 to the Economic Development and Tribal Center Program, and $50,000 to the Miscellaneous Program, the required sum from the interest earned on the principal from the dates of investment will be added to the principal amount.

(3) The judgment funds will be maintained by the Secretary in interest-bearing accounts in trust for the Tribe.

(4) No amount greater than 10 per centum of the interest earned on the principal may be used for the administrative costs of any of the above programs, except as provided in section 4(h)(5) below.

(5) No Service Area is implied or imposed under any program under this Act. If the

costs of administering any program under this Act for the benefit of a tribal member living outside the Tribe's Indian Health Service Area are greater than 10 per centum of the interest earned thereon, the Tribe's governing body may authorize the expenditure of such funds for that program, but in carrying out the program shall give priority to individuals within the Tribe's IHS Service Area.

(f) The Tribe's governing body may at any time after enactment of this Act declare a dividend to Tribal members from the profits from any business enterprise of the Tribe. Prior to declaring or distributing dividends, however, the Tribe's governing body must first take into consideration the effect of such declaration or distribution of dividends on future operating costs and proposed business expansions. Profits from business enterprises may also be distributed back into any of the programs established by section 4 of this Act, provided that future operating costs and proposed expansion costs are first set aside. Any such distribution back into the programs under this Act shall be proportional to the percentage of principal then being allocated hereunder.

SEC. 5. TRIBAL MEMBERSHIP.

Within seven days of the date of enactment of this Act, the Secretary shall advise all appropriate officials and employees of the United States Department of the Interior and the Bureau of Indian Affairs of the definition of the membership of the Cow Creek Band of Umpqua Tribe of Indians as defined in this Act.

SEC. 5. (a) The members of the Cow Creek Band of Umpqua Indians shall consist of every individual named in the Tribal roll that was published in the Tribe's answer to the United States Interrogatory numbered 14 in the United States Claims Court docket numbered 53-81L, as supplemented through additional enrollments through December 29, 1982, and descendants of any individuals named in such roll born on or before the date of enactment of this Act. Thereafter, membership in the Tribe shall be determined as provided in the Tribal Constitution, By-laws, and Membership Ordinance.

(b) Membership in the Tribe pursuant to subsection (a) shall not entitle an individual who shared in the distribution of funds under the Act of August 13, 1954 (25 U.S.C. 564 et seq.) or the Act of August 13, 1954 (25 U.S.C. 691 et seq.) to participate in any distribution of funds pursuant to a judgment under the Act approved May 26, 1980 (94 Stat. 372).

SEC. 6. ELIGIBILITY OF NON-TRIBAL MEMBERS.

(a) Notwithstanding any provision of this Act, non-tribal members shall be eligible to participate in the programs established pursuant to section 4(c) and (d) of this Act if they are within that group of persons described in section 4(a) of the Act of May 26, 1980 (P.L. 96-251) and satisfy the enrollment requirements of section 6 (b) of this Act.

(b) In order to qualify as an eligible non-Tribal member under section 6(a), non-Tribal members must submit an enrollment application to the tribe within 180 days of the date of this Act in which they must establish that they satisfy the criteria of section 6(a). All decisions on such application shall be made by the Tribe: *Provided*, That any applicant who has been denied eligibility by the Tribe shall have the right to appeal to the Secretary of the Interior.

The SPEAKER pro tempore. Is a second demanded?

Mr. McCAIN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Oregon [Mr. WEAVER] will be recognized for 20 minutes and the gentleman from Arizona [Mr. McCAIN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Oregon [Mr. WEAVER].

GENERAL LEAVE

Mr. WEAVER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 3214, the bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

Mr. WEAVER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in 1980 Congress enacted Public Law 96-251 enabling the Cow Creek Band of Umpqua Indians, a tribe whose ancestral homelands are in my congressional district in southwestern Oregon, to pursue a taking claim in the U.S. Claims Court. Pursuant to a settlement agreement between the parties, the court granted an award of $1,500,000 to the tribe on June 12, 1984. Funds to satisfy the award were appropriated by the Congress on August 21, 1984.

In the interim, Federal recognition was restored to the Cow Creeks through the enactment of Public Law 97-391 on December 29, 1982. The tribe subsequently developed a judgment fund distribution plan providing that the entire judgment fund, less costs of pursuing the claim, would be set aside as the principal from which specified tribal programs would be funded. The interest earned on this principal would be committed to elderly assistance, higher education and vocational training, housing assistance, economic development, and other tribal programs.

I strongly endorse this approach. The taking claim is a tribal one and, as a result, the judgment fund should be utilized in a way that benefits the tribe as a whole.

Mr. Speaker, the legacy of per capita distributions is a dismal one. Small one-time payments may provide a minimal short-term benefit to the individuals receiving them, but they do not further the long-term interests either of those persons or of the tribe. H.R. 3214 avoids that result by establishing a variety of programs that will assist all tribal members and promote tribal self-sufficiency.

Furthermore, this bill will add no costs to State or local governments, and will actually increase receipts to the Federal Government by an estimated $20,000 to $30,000 annually beginning in 1989.

Finally, the Interior Committee held a hearing on H.R. 3214 on December 10, 1985. I offered several amendments to the bill at the March 19, 1986, markup, to address concerns that had been raised by the administration and some witnesses at the hearing. I believe those concerns were valid and that our amendments strengthened the bill.

I thank the chairman and ranking member, as well as committee staff, majority, and minority, for their assistance in bringing this bill to the floor today. I urge my colleagues to support the passage of H.R. 3214 so that the Cow Creek Band of Umpqua Indians can move another step closer to self-sufficiency.

Mr. Speaker, I would conclude my remarks by saying that I want to thank my good friend, the distinguished gentleman from Arizona [Mr. McCAIN], for all the concerns and the interest and help that he has offered in these matters affecting Oregon Indians, and I know his interest ranges nationwide, as well as for the people of his home State. I want to thank the gentleman very much for that.

Mr. Speaker, I reserve the balance of my time.

Mr. McCAIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 3214, a bill to provide for the use and distribution of funds for the Cow Creek Bank of Umpqua Indians. H.R. 3214 would require the Secretary of the Interior to set aside and hold in trust $1.5 million awarded to the band in 1984 by the U.S. Claims Court as principal from which tribal programs would be funded, including educational scholarships, housing assistance, elderly assistance payments, economic development, and repayment of a previous BIA loan.

Mr. Speaker, many judgment fund awards have been distributed pursuant to congressional action on a per capita basis to members or descendants of members of the harmed tribe. Very few tribes can show how the tribe has benefited by the payments being distributed in that fashion. Unfortunately, within months most of the payments had been dissipated through spending. I commend tribes which seek to use the funds for the benefit of their members today and in the future, as the Cow Creek Band of Umpqua Indians are desiring to do with these funds.

I would like to also recognize the work of my colleague, the gentleman from Oregon [Mr. WEAVER], on behalf of this band of Indians. They are a small group of Indians. They have been neglected throughout the history of this Nation. I think it is extremely commendable that the gentleman from Oregon [Mr. WEAVER] has made this payment possible and made this law not only passable but without controversy. I think the great band of Umpqua Indians and Indians throughout our Nation deservedly praise the gentleman from Oregon [Mr. WEAVER]

for this bill and his previous dedication as a member of the Committee on Interior and Insular Affairs on behalf of Indians throughout this Nation.

Mr. Speaker, H.R. 3214 was reported out of the Interior Committee without opposition, and the administration now has no objection to the bill, as amended.

I urge my colleagues to support H.R. 3214.

Mr. Speaker, I reserve the balance of my time.

□ 1240

Mr. WEAVER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I simply want to again thank my friend, the gentleman from Arizona [Mr. McCAIN], for his kind remarks and his good work.

I also would like to commend the tribe itself, and Sue Shaffer, a magnificent American, for putting this judgment fund together in this way, for fighting for this way of helping the whole tribe. I think the Cow Creeks deserve our commendation, and in particular, Sue Shaffer, for her great leadership.

Mr. Speaker, with that I yield back the balance of my time.

Mr. McCAIN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Oregon [Mr. WEAVER] that the House suspend the rules and pass the bill, H.R. 3214, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

REHABILITATION ACT AMENDMENTS OF 1986

Mr. WILLIAMS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4021) to extend and improve the Rehabilitation Act of 1973, as amended.

The Clerk read as follows:

H.R. 4021

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Rehabilitation Act Amendments of 1986".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

TABLE OF CONTENTS

TITLE I—AMENDMENTS TO THE GENERAL PROVISIONS

Sec. 101. Rehabilitation Services Administration.
Sec. 102. Definitions.
Sec. 103. Reports.
Sec. 104. Evaluation.
Sec. 105. State administration.
Sec. 106. Report of the Secretary.

TITLE II—VOCATIONAL REHABILITATION SERVICES

Sec. 201. Authorization of appropriations.
Sec. 202. State plans.
Sec. 203. Individualized written rehabilitation program.
Sec. 204. Scope of vocational rehabilitation services.
Sec. 205. Non-Federal share for construction.
Sec. 206. State allotments.
Sec. 207. Funds for American Indian vocational rehabilitation services.
Sec. 208. Payments to States; maintenance of effort.
Sec. 209. Client assistance program.
Sec. 210. Payments to States.
Sec. 211. American Indian vocational rehabilitation services grants.
Sec. 212. Evaluation.
Sec. 213. American Indian vocational rehabilitation services.

TITLE III—RESEARCH AND TRAINING

Sec. 301. Authorization of appropriations.
Sec. 302. National Institute of Handicapped Research.
Sec. 303. Interagency committee.
Sec. 304. Research.

TITLE IV—SUPPLEMENTARY SERVICES AND FACILITIES

Sec. 401. Grants for construction of rehabilitation facilities.
Sec. 402. Vocational training services for handicapped individuals.
Sec. 403. Training.
Sec. 404. Comprehensive rehabilitation centers.
Sec. 405. Special projects and supplementary services; authorization of appropriations.
Sec. 406. Special demonstration programs.
Sec. 407. Supported employment.
Sec. 408. Special recreational programs.
Sec. 409. Duties of National Council.

TITLE V—ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Sec. 501. Architectural and Transportation Barriers Compliance Board.
Sec. 502. Interagency Coordinating Council.

TITLE VI—EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH HANDICAPS

Sec. 601. Equitable distribution of assistance.
Sec. 602. Authorization of appropriations for part A of title VI.
Sec. 603. Projects with industry.
Sec. 604. Other authorizations of appropriations under title VI.

TITLE VII—COMPREHENSIVE SERVICES FOR INDEPENDENT LIVING

Sec. 701. Authorization of appropriations.

TITLE VIII—TECHNICAL AND CONFORMING AMENDMENTS TO THE ACT

Sec. 801. Use of gender neutral terminology in Act.
Sec. 802. Technical and conforming amendments.

TITLE IX—AMENDMENTS TO OTHER LAWS

Sec. 901. Reauthorization of Helen Keller National Center Act.
Sec. 902. President's Committee on Employment of the Handicapped.

TITLE X—EFFECTIVE DATES

Sec. 1001. General provision.

TITLE I—AMENDMENTS TO THE GENERAL PROVISIONS

SEC. 101. REHABILITATION SERVICES ADMINISTRATION.

(a) APPOINTMENT BY SECRETARY.—The Rehabilitation Act of 1973 (29 U.S.C. 701, et. seq.; hereinafter referred to as "the Act") is amended in section 3(a) by striking out "appointed" and all that follows through the first sentence and inserting in lieu thereof "who shall be appointed by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services. The position of Commissioner shall be compensated at the rate provided for grade GS-18 of the General Schedule under section 5104 of title 5, United States Code, and shall be a Senior Executive Service position for the purposes of section 3132(a)(2) of such title. The Commissioner shall be an individual with substantial experience in rehabilitation and in rehabilitation program management.".

(b) APPLICATION.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply with respect to the first vacancy in the office of Commissioner which occurs after the date of the enactment of this Act.

SEC. 102. DEFINITIONS.

(a) FEDERAL SHARE.—

(1) Effective October 1, 1988, section 7(6) of the Act is amended to read as follows:

"(6)(A) Subject to subparagraphs (B) and (C), the term 'Federal share' means 80 percent.

"(B) For any fiscal year for which payments to a State under section 111(a) exceed such payments for fiscal year 1988, the Federal share for those payments in excess of the fiscal year 1988 amount shall be 79 percent for fiscal year 1989, 78 percent for fiscal year 1990, 77 percent for fiscal year 1991, 76 percent for fiscal year 1992, and 75 percent for fiscal year 1993.

"(C) The term 'Federal share' means 90 percent for the purposes of part C of title I of this Act and as specifically set forth in section 301(b)(3), except that with respect to payments pursuant to part B of title I of this Act to any State which are used to meet the costs of construction of those rehabilitation facilities identified in section 103(b)(2) in such State, the Federal share shall be the percentages determined in accordance with the provisions of section 301(b)(3) applicable with respect to the State.

"(D) For the purpose of determining the non-Federal share with respect to a State, expenditures by a political subdivision thereof or by a local agency shall be regarded as expenditures by such State, subject to such limitations and conditions as the Secretary shall by regulation prescribe.".

(2) Effective October 1, 1988, section 110(b)(2) of the Act is amended by striking out "80 percent" both places it appears and inserting in lieu thereof "the applicable Federal share".

(b) HANDICAPPED INDIVIDUALS.—

(1) Section 7(7) of the Act is amended by striking out "handicapped individual" both places it appears and inserting in lieu thereof "individual with handicaps"; and

(2) The Act is amended—

(A) by striking out "a handicapped individual" each place it appears and inserting in lieu thereof "an individual with handicaps";

(B) by striking out "handicapped individual" each place it appears and inserting in lieu thereof "individual with handicaps"; and

(C) by striking out "handicapped individuals" each place it appears and inserting in lieu thereof "individuals with handicaps".

(c) LOCAL AGENCY.—Section 7(8) of the Act is amended—

(1) in the first sentence by striking out "tribal" and all that follows before the period and inserting in lieu thereof "tribe (or combination of such units or tribes)"; and

U.S. DISTRICT COURT
DISTRICT OF OREGON
SOUTHERN DIVISION
FILED
JUL 28 1986
ROBERT M. CHRIST, CLERK
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

ROBERT L. BUSCHMANN, RONALD E. BUSCHMANN; and JAMES W. BUSCHMANN,	)	
Plaintiffs,	)	Civil No. 85-6137-E
v.	)	OPINION
COW CREEK BAND OF UMPQUA TRIBE OF INDIANS, INC.; SUE M. SHAFFER; CHARLES JACKSON; ELLIS U. BUSCHMANN; NAOMI R. RIEBE GOULD; LOUELLA RONDEAU MICHAELS; GARLAND RAINVILLE; JOHN YOUNG; RALPH YOUNG; AMARYLIIS FREEMAN YOUNG; MARY DUMONT HOWREN; DENNIS J. WHITTLESEY; and STEPHEN DOW BECKHAM,	)	
Defendants.	)	

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PRO PER DEFENDANTS

HOGAN, Magistrate:

Plaintiffs filed this action in the Circuit Court of Oregon for Douglas County seeking (1) to set aside certain corporate action by the Cow Creek Band of the Umpqua Tribe of Indians Incorporated, an Oregon nonprofit corporation (the Corporation), and (2) to recover a fee for research services. Defendants removed the action to this court on the ground that plaintiffs' allegations are claims under 25 U.S.C. § 712 et seq., the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (the Cow Creek Recognition Act).

I. BACKGROUND

The background is based on the testimony and documents adduced at trial, which was to the court sitting without a jury.

This case involves a tribe of native Americans known as the Cow Creek Bank of Umpqua Tribe of Indians (the Tribe). The Tribe gained federal recognition effective December 29, 1982, by the Cow Creek Recognition Act.

A. Early history of the Cow Creeks.

Before 1853, the Cow Creek Indians lived on approximately 800 square miles of land near present day Canyonville, Oregon. On September 19, 1853, the Tribe and the United States government signed a treaty, 10 Stat. 1027, which contained the following agreements:

1. The Tribe ceded its land to the government for $12,000, payable in provisions over approximately twenty years,

2. The Tribe could temporarily live on a small reserve on the ceded land until the President of the United States determined where the tribe should permanently live,

3. The government was to build two houses on the reserve and fence five acres for farming.

The government built the two houses, and paid the first $1,000 in provisions. The Tribe then began living on the temporary reserve. However, during the Rogue River Indian War in 1855, many of the tribal members fled the reserve to live in the surrounding hills. In the winter of 1855-56, the government transferred the few tribal members who then lived on the reserve

to the Grand Ronde reservation near the central Oregon coast. The government paid the remaining $11,000 in provisions to residents of the Grand Ronde reservation. Most of the tribal members who did not go to the Grand Ronde reservation continued to live in the Canyonville/Cow Creek area. These tribal members and their descendents maintained a loose tribal identity through the ensuing years, and many continued to live in southern Douglas County. The Tribe met periodically, but the record does not reveal whether the Tribe had an official governing body.

For many years, the Tribe called itself the "Upper Umpqua Indians". In the early 1920's and 30's, tribal members obtained the introduction of five bills into Congress to seek redress from the government. In 1932, President Hoover vetoed a tribal recognition bill that both the House and Senate had approved.

In 1954, the U.S. Government terminated federal supervision of and services for tribes of Western Oregon Indians, including the Cow Creeks. 25 U.S.C. § 691 et seq. The government did not consult with any Cow Creeks before termination.

B. Parties to this case.

Robert (Bob) Buschmann, Ronald (Ron) Buschmann and James Buschmann, plaintiffs, are brothers. Plaintiffs and defendants Sue Shaffer, Charles Jackson, Ellis Buschmann, Naomi Gould, Louella Michaels, Garland Rainville, John Young, Ralph Young, Amaryllis Young and Mary Howren trace their ancestry, as do all present Cow Creeks, to one of the seven or eight original Cow Creek families which did not move to the Grand Ronde reservation.

All these defendants have been or are now on the governing board of the Cow Creek tribe. Defendant Dennis Whittlesey, Esq., an attorney who has represented the tribe, and defendant Stephen Beckham, a professor at Lewis and Clark College, do not claim Cow Creek ancestry.

C. Background of this action.

In the early 1970's, many of the present Cow Creeks began meeting more regularly to preserve their culture and to possibly seek federal recognition. This group originally was unincorporated. Gould testified that the group incorporated in 1975 in Oregon, apparently as "the Upper Umpqua Indians". The governing body was called the Upper Umpqua Indian Council. Ron and Bob Buschmann first began attending the meetings in early 1977. James Buschmann did not appear at trial, and the record does not reflect if or when he attended meetings. In approximately September, 1977, Bob Buschmann recommended and the Corporation agreed that Robert Thomas, Esq., an attorney in Klamath Falls, Oregon, should assist the Corporation in pursuing any potential claims against the government.

In approximately November, 1977, Bob Buschmann volunteered to research the background of the tribe and any claims it might bring. Bob Buschmann testified that he worked four hours per day for Robert Thomas on unrelated matters and researched at least another four hours per day for the Cow Creeks from November, 1977, until April, 1979. He testified that he spent more than 3300 hours researching the Cow Creek claims between

November, 1977 and April, 1979.

Sometime in early 1978, some of the parties first learned about the 1853 Cow Creek treaty. Bob Buschmann testified that he found the treaty. Several defendants testified that a Jerry Running Fox, a Coquille indian, found it. In March, 1978, the Corporation changed its name to the Cow Creek Band of the Umpqua Indians, and about that time, its members began calling themselves "Cow Creeks". In early spring 1978, Bob Buschmann first contacted Beckham, who has extensively researched and written about western Oregon Indians. Bob Buschmann gave Beckham some copies of documents he had found. Beckham testified that he did not use any of Buschmann's research materials in later efforts in the tribe's behalf because he already had all the citations Buschmann gave him.

On September 10, 1978, the Directors of the Corporation approved the 1978 bylaws for the Corporation. (Exhibit #24). Ten directors signed this document, which contained information about membership in the Corporation, the directors and officers of the Corporation, and meetings of the Corporation. Under these bylaws, the "Tribal Council" is defined as the "general membership of this Corporation".

Sylvia Buschmann, Bob Buschmann's former wife, testified that she was "enrollment" secretary for the Corporation from 1978 to April 1979. She is not of Cow Creek descent. Her job was to compile a "roll", and send enrollment cards to members. All the plaintiffs received membership cards. Several tribal members

had worked on such a roll before, but Sylvia Buschmann alphabetized all the previous lists and added names to those lists if the people could establish Cow Creek descent. Sylvia Buschmann does not have the written roll she prepared. Bob Buschmann testified that a typewritten list he submitted at trial (Exhibit #97) is identical to the roll Sylvia Buschmann prepared. All the plaintiffs are on this roll, but there was no evidence that the Corporation voted to accept it.

By April, 1979, Bob Buschmann and Thomas' relationship had deteriorated and Bob Buschmann quit working in Thomas' office.

On April 27, 1979, the Corporation held a meeting at which Bob Buschmann presented a proposed agreement between him and the Corporation regarding his role with the Corporation. Buschmann proposed in this agreement that he would perform research work for the Corporation at no charge, except expenses he could not pay. However, he would: (1) keep control over all documents regarding all federal claims; (2) continue as "legal representative, researcher and director of the Corporation", (3) be informed by the corporate attorney of any action regarding federal claims; (4) be informed by the Council regarding any expenses involved in the federal claims; and (5) make temporary decisions for the Corporation. The Corporation rejected Buschmann's proposed agreement, and the testimony of several witnesses was that the relationship between the Corporation and plaintiffs then began to deteriorate. As Howren testified, the

consensus of the Directors became that "we don't want Bob Buschmann around". Howren, the Corporation's secretary, testified that she continued to send meeting notices to plaintiffs, however. After the April, 1979 meeting, Sylvia Buschmann did not continue as enrollment secretary.

In June, 1979, several tribal members testified before Congress in support of legislation to allow the tribe to file a Court of Claims action. Bob Buschmann submitted a "brief" to Congress (Exhibit #6) that he allegedly prepared solely by himself. Bob Buschmann had also helped compile, along with many others, family histories. The Corporation also employed Beckham to testify. Thomas represented the Corporation at the Congressional hearing, but Whittlesey, at Beckham's recommendation, was then first associated and assisted the Corporation regarding the Court of Claims legislation. Congress approved the Court of Claims legislation on May 26, 1980. PL 96-251.

While the Court of Claims legislation was pending, the corporation directors decided to compile an "official" roll of members. On April 13, 1980, the directors met and voted to open registation for enrollment from April 13, 1980 to June 30, 1980. Under the procedure adopted, each person had to request in writing that his name be placed on the roll, regardless of whether his name had been included in any previous compilations. On April 23, 1980, Howren sent a "Special Bulletin" she had drafted to all known members of the Corporation, explaining the directors' action, and stating the requirement of a written

request for placement on the roll. Bob Buschmann testified that he received the Special Bulletin. Ron Buschmann testified that he did not receive the Special Bulletin, but he did know about it. Neither submitted a written request to be placed on the tribal roll until January 19, 1983, because they both felt they were already on the roll, and that no one contested their Cow Creek ancestry. The Board of Directors denied both their requests for inclusion on the roll in October, 1983, but they had not submitted written requests until long after June 30, 1980.

Sylvia Buschmann testified that in October or November, 1980, she sent a certified letter to Sue Shaffer, who was then a director, and requested that her and Bob Buschmann's minor sons be placed on the roll. The directors never responded. John Young testified that the board did not consider the request because Sylvia was not a Cow Creek. However, the Special Bulletin stated only that the "natural or legal guardian" needed to apply for an underage child; it did not state that the Cow Creek parent had to apply. One of Sylvia and Bob Buschmann's minor children died of cancer in 1983. Sometime between July, 1983 and May, 1985, Sylvia Buschmann wrote to Louella Michaels about the tribal status of her other minor child. Michaels wrote back stating that this child was not on the roll.

In September or October, 1981, Howren signed a new set of bylaws for the Corporation and dated them August 9, 1981 (the 1981 bylaws). (Exhibit #50). She testified that these bylaws were never presented "in its entirety" for acceptance by the

Corporation. The minutes of the August 9, 1981 board meeting (Exhibit #1-h) do not reflect that the Corporation discussed the amendments. The minutes for the June 8, 1980 board meeting (Exhibit #128) state in part:

> Mr Thomas introduced Mike Miller who is now working for him and said Mike had done a great deal of the work on revamping our Bylaws. Mike read and explained proposed changes as he went along. After a rather lengthy discussion, Louella moved to accept the Bylaws as amended, with the corrections of today being noted, Naomi seconded the motion, motion carried by the Board unanimously, carried by Council members present, 18 for and none opposed.

The effective date of the Recognition Act was December 29, 1982. PL 97-391. The Council filed the 1981 bylaws with the Bureau of Indian Affairs as the recognized Tribe's governing document.

On December 28, 1984, the Oregon Department of Commerce involuntarily dissolved the Cow Creek corporation because the corporation had not submitted an Annual Report or license fee.

In 1984, the Cow Creeks prevailed in the Court of Claims litigation and obtained a $1,500,000 award from the government. Whittlesey was awarded a $150,000 attorney fee in that case. The record reflects that the Cow Creeks disagree about the distribution of the Court of Claims judgment: some want a per capita distribution to all tribal members, while others want distribution to the tribe as a whole with a limited per capita distribution to older tribal members (tribal elders). The current board of directors apparently now supports the latter distribution concept.

Bob Buschmann disagrees with the amount of the Court of Claims award, with the distribution formula proposed by the current board of directors, and with other tribal decisions. Since approximately July, 1984, he has sent several "Newsletters" expressing his views to everyone on the tribal mailing list. In these lengthy newsletters, Bob Buschmann has referred to defendants Shaffer, Jackson, Michaels, Beckham and Whittlesey as follows:

> 1. [they] are lying, cheating, and stealing from the REAL Cow Creek Tribal Members ... [and they are] thieves, liars and cheats. (Newsletter sent September or October, 1984 - Exhibit #135).
>
> 2. [they have] attempted to sell the Cow Creek Indian Tribe down the proverbial river and at this time are involved in defrauding the tribe of their rights and benefits. (Newsletter dated January 1985 - Exhibit #139).
>
> 3. The Cow Creek Tribal Decendants (sic) has and is being sold down the river by [them]. (Newsletter sent in April, 1985 - Exhibit #145).
>
> 4. Federal criminal complaints have recently been filed against Dennis J. Whittlesey, Steve Beckham, Kathryn Staiano, Sue Shaffer, other past and present Tribal Directors and Cow Creek Tribal employees that have been or are presently involved in FRAUD, CONSPIRACY TO COMMIT FRAUD, MISUSE OF FEDERAL AND TRIBAL FUNDS AND FRAUDULENT MISREPRESENTATION. (Newsletter dated July 15, 1985 - Exhibit #147).

Bob Buschmann admits that he sent all these newsletters to the approximately 200 households on the tribal mailing list. In February, 1986, Bob Buschmann sent another newsletter in which he charged more "fraud and corruption" in conjunction with "Sue Shaffer's paranoid leadership".

During some of the time Bob Buschmann was distributing his newsletters, Shaffer, Jackson and Michaels were on the Tribal Board of Directors. Shaffer is still on the board. Beckham is not a Cow Creek. He testified before Congress three times for the Cow Creeks: in 1979, 1982 and 1985. He was an "enrollment counsultant" for the tribe between October, 1983 and July, 1985, and he once met with Shaffer and Ben Rondeau to discuss the proposed distribution of the court of claims award.

II. THE PARTIES CLAIMS

A. Plaintiffs

1. First claim

All three plaintiffs contend that the corporation acted improperly as follows:

a. it unlawfully amended its bylaws on April 13, 1980 by requiring people to request in writing to be placed on the "tribal roll",

b. it unlawfully adopted new bylaws in 1981,

c. it denied plaintiffs access to meetings and corporate documents.

Plaintiffs contend that they did not discover the alleged illegal corporate activity until March, 1984. Defendants contend that the tribe is immune from suit. Alternatively, defendants contend that plaintiffs' action is barred by the applicable statute of limitations, or finally, that the corporate action was proper.

2. Second claim

Bob Buschmann, the only plaintiff pursuing this

claim, alleges that he should recover the sum of $30,000 from Whittlesey, Beckham, Shaffer, Jackson, Michaels, and Ellis Buschmann for his time researching the Cow Creek background. He does not seek recovery from the Corporation or the Tribe. The precise basis for this recovery is difficult to ascertain, but Bob Buschmann apparently argues that these defendants converted the product of his research or received unjust enrichment in the Court of Claims litigation because of his research.

Defendants deny that any agreement existed between them and Bob Buschmann, or that they received any benefit from his research.

B. Defendants

Defendants Shaffer, Jackson, Michaels and Beckham have counterclaimed against Bob Buschmann alleging (1) that he libelled them in the newsletters he sent in September, 1984, January, 1985, and April, 1985; (2) plaintiffs conspired to libel these defendants; and (3) Bob Buschmann should be enjoined from libelling these defendants.

At trial, I granted plaintiffs' motion for a directed verdict on the conspiracy allegation because defendants failed to prove that Ron or James Buschmann were involved with the publication of the newsletters. Bob Buschmann asserts that these defendants are "public figures", and that he has not libelled them because his newsletters contained "legislative comment".

III. DISCUSSION

A. Plaintiffs' first claim: Corporate Action

The court has jurisdiction under the Recognition Act because this claim relates to the "tribal roll" and the tribe's governing document.

Defendants argue that the tribe is immune from suit, because the tribe has not waived its immunity or consented to the suit. A "recognized Indian tribe" is immune from suit in state or federal court. Puyallup Tribe v. Department of Game of the State of Washington, 433 U.S. 165, 97 S.Ct. 2616, 2621 (1977) and United States v. United States Fidelity & Guaranty Co., 309 U.S. 506, 60 S.Ct. 653, 656 (1940). However, plaintiffs' allegations involve an Oregon corporation and events occurring before Congress recognized the Cow Creek Tribe. Plaintiffs do not seek relief against the recognized tribe. The Cow Creek tribe was terminated between 1954 and December 29, 1982. Congress has the power to void a tribe's immunity. United States v. Oregon, 657 F.2d 1053 (9th Cir. 1982). There was no tribal immunity between 1954 and December 29, 1982. Therefore, the tribe's immunity does not bar plaintiffs' claim.

1. The tribal roll

a. Plaintiffs' contentions

Plaintiffs seek to overturn a motion approved by the corporation on April 13, 1980, which required all persons desiring placement on the "tribal roll" to so request in writing. Plaintiffs argue that this action amended the 1978 bylaws, and it was improper because (1) there was inadequate notice of the meeting under Roberts Rules of Order; (2) Sue Shaffer, an ineli-

gible member, made the motion; and (3) the motion was not approved by an appropriate quorum of the Tribal Council.

Article II of the 1978 bylaws is entitled "Membership Qualifications" and it states:

> Section I. The general membership of this corporation shall be known as the Tribal Council. No persons shall be a member of Tribal Council unless he shall be able to trace his ancestory to the members of the Cow Creek Band who claimed and lived upon that land described in the treaty of September 19, 1853 with the United States Government.
>
> Section II. A tribal roll shall be prepared under the supervision of the Board of Directors, listing all known persons decended from the members of the original Cow Creek Band, as defined in Section I.
>
> Section III. Any person not listed on the tribal roll, as prepared under the provisions of Section II, may make a written application for inclusion on the roll. The application shall be made to the Secretary of the Board of Directors, and shall be considered by the Board at the next regular meeting after the receipt by the Secretary of the application. The Board shall make such investigation as it deems necessary to verify the right of the applicant to be included on the roll, and may require, as part of its investigation, that the application furnish proof of blood lineage. After completing its investigation, but not later than three (3) regular meetings after receipt of the application, the Board shall take action on the application by either accepting or rejecting it. If the application is accepted, the Board shall direct the Secretary to enter the applicants name on the rolls of the Cow Creek Band.
>
> Section IV. Membership of the corporation shall be limited to persons appearing on the roll created under the provisions of Sections II and III above, who are over the age of 18 years and who comply with any other membership requirements, which may be set by the Board. The Secretary shall also keep a separate listing of members of

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> the Corporation. Such membership roster shall be continously updated. The membership roll shall determine eligiblity to vote at the annual Tribal Council meeting or at any special Tribal Council Meeting.

I find that the April 13, 1980 motion regarding the written membership application did not amend the 1978 bylaws. Article II, Section II clearly contemplates that the Board of Directors will prepare a "tribal roll". The 1978 bylaws did not preclude the requirement of a written membership application, and the April 13, 1980 motion was simply the execution of the authority granted the directors under Article II, Section II.

Plaintiffs argue that they were on the previous "rolls" and consequently they did not need to apply in writing. Plaintiffs presented evidence of a previous "roll" or mailing list that many people, including Bob and Sylvia Buschmann, had compiled for the Corporation. However, the Corporation never formally adopted any of these rolls, and therefore I cannot now adopt any of these as the official roll.

Plaintiffs' other arguments regarding the impropriety of the April, 1980 motion are also unavailing. The Corporation did not notify the membership that the April 13, 1980 meeting would include a vote to amend the bylaws. However, as I have found above, the April, 1980 motion did not amend the bylaws. The corporate membership had been notified that the Corporation would meet on April 13, 1980.

Plaintiffs did not produce sufficient evidence to distinguish Sue Shaffer's membership in the Corporation from that

of anyone else. Based on the record, she properly made the motion.

Finally, under the 1978 bylaws, there was a quorum of both the directors and the council at the April 13, 1980 meeting. Article V, Section I of the 1978 bylaws states:

> ... A quorum for the regular meetings, special meetings or the annual meeting of the Board of Directors shall consist of six (6) members, no business shall be transacted unless six (6) members shall be present.

Article V, Section II of the 1978 bylaws states:

> ... A quorum for either the annual meeting or any special meeting, of the Tribal Council, must consist of twenty-five (25) council members to conduct business.

Plaintiffs argue that the 1978 bylaws require a quorum of 25 council members and six directors (25 plus 6) for a council meeting. There were not 25 council members, in addition to the directors, who attended the April 13, 1980 meeting. The plain language of the bylaws requires only 25 council members for a quorum at a council meeting. The directors are also council members, and may be counted as such. More than 25 council members, including directors, attended the April 13, 1980 meeting. Therefore, a quorum was present. Every voting member present voted for the motion.

The real difficulty with plaintiffs' argument is that the 1978 bylaws authorized the directors to prepare the roll. Therefore, the April 13, 1980 motion was really an action of the directors, not the entire council. A quorum of the

directors approved the motion.

The directors then sent a sufficient notice to everyone on the mailing list, requesting a written application. Plaintiffs all received written or oral notice of the enrollment project and its terms. After the enrollment period closed, the directors approved the official "Tribal Roll" at the September 13, 1980 meeting (Exhibit #129). All ten directors and sixteen general members present approved the roll. Therefore, the corporate action in compiling and adopting an "official roll" was proper.

Defendants also contend that the applicable two year statute of limitations in ORS 12.110(1) bars plaintiffs' claim on this issue. Plaintiffs filed their complaint in state court on March 25, 1985. The evidence is that Bob Buschmann knew about the allegedly inadequate notice of the April 13, 1980 meeting either in 1980 or 1981. In 1980, he knew that Shaffer made the enrollment motion; but he learned about the quorum issue only in March, 1984, when he first received a copy of the minutes of the meeting. ORS 12.110(1) states that the statute of limitations commences when the fraud or deceit is discovered. Consequently, plaintiffs' arguments regarding notice and Shaffer are barred by ORS 12.110(1), as well as failing on the merits.

b. Effect of corporate roll

I have found that the corporation properly adopted an "official roll". However, I also find based on the evidence adduced at trial, that this roll was simply a corporate

membership roll, and not an official tribal roll (i.e., all persons who can trace their ancestry to the original Cow Creeks). The Corporation approved this roll over two years before Congress recognized the tribe. There is no evidence in the record before the court that the recognized tribe has ever compiled an official roll.

Several defendants testified that all the meetings, including the April 13, 1980 and September 13, 1980 meetings, were tribal, not corporate meetings. These defendants testified that no corporate meetings were ever held. The difficulty with that testimony is that the "tribe" was not recognized until December 29, 1982. Until then, the tribe was only an Oregon corporation, and necessarily acted as a corporation. The record does not contain any minutes or other documents which clearly state that the "tribe", not the Corporation, met. The "tribal roll" asserted here was prepared under corporate bylaws for a corporation: "the general membership of this corporation shall be known as the Tribal Council ...." (Article II, Section I of the 1978 Bylaws). The "tribal roll" in Article II, Section II of the 1978 bylaws was in fact the corporate roll. See also Article II, Section IV of the 1978 bylaws.

Plaintiffs were not listed on the corporate roll but the import of this is problematic because the corporation is now dissolved. Therefore, based on the record, the recognized tribe did not have a "tribal roll" on December 29, 1982, as defined by 25 U.S.C. § 712(c). The recognized tribe may have

since adopted a roll, but the record does not show it. As stated in Bachiarelli v. Morton, 481 F.2d 610, 611 (9th Cir. 1973): "An Indian tribe has complete authority to determine tribal membership except in specific instances." The recognized tribe must determine who is a descendent of the original Cow Creeks and how a roll should be compiled; the court cannot decide those issues.

2. The 1981 bylaws

Bob Buschmann first received the minutes of the July and August 1981 meetings in March, 1984. ORS 12.110(1) does not bar plaintiffs' claim regarding the 1981 bylaws. In addition, ORS 61.600 and ORS 57.630 state that the dissolution of a non-profit corporation does not impair any claims against a corporation if the action is commenced within five years of the dissolution, as plaintiffs did in this case.

The issue is whether the corporation properly adopted the 1981 bylaws, which included major amendments to the 1978 bylaws. Mary Howren testified that she signed these bylaws as secretary in September or October, 1981, and dated them as "presented" and "approved" on August 9, 1981. She also testified that the 1981 bylaws were never presented to the Council "in its entirety". The June 8, 1980 minutes state that the Council discussed and approved certain amendments to the bylaws, but these minutes do not reflect which amendments the Council discussed. The minutes of the August 9, 1981 meeting do not reflect any discussion of the new bylaws.

The 1978 bylaws state at Article V, Section VI that

> These Bylaws may be amended by two-thirds vote of the eligible members of the corporation present at any regular meeting or any of the board or at a special meeting where there is a quorum present.

The record does not contain any evidence that either the corporate council or the corporate directors ever voted and approved the 1981 bylaws "in its entirety", or that Howren was authorized to sign and back date these bylaws. Therefore, these bylaws must be set aside.

The recognized tribe can submit its own governing document to the Secretary of the Interior under 25 U.S.C. § 712(b), and the record reflects that the 1981 bylaws were submitted to the Secretary. However, there is no evidence in this record that the recognized tribe has approved those bylaws. Apparently, these bylaws were submitted to the Secretary based on the prior corporate approval, which I find was inadequate. Therefore, the recognized tribe must approve new bylaws or affirm the 1981 bylaws and submit them to the Secretary.

3. Corporate records/meetings

Plaintiffs have proved no damages for the alleged inability to attend corporate meetings or receive corporate records. They were not members of the corporation after they failed to apply in writing. The Corporation is now dissolved and there are no corporate meetings to attend.

B. Plaintiff Bob Buschmann's second claim: Compensation for research time

The pleadings did not clearly state the basis for this

claim. At trial, Bob Buschmann testified that he based this claim on a conversion or unjust enrichment theory rather than a contractual or "general understanding" theory. There is no contractual basis for Bob Buschmann's claim. Bob Buschmann did not produce any written documentation or other evidence of an agreement with anyone. There are no corporate minutes stating that the corporation or any individual member would pay Bob Buschmann for his research time. The corporation reimbursed him for certain expenses, but did not agree to pay for his time. The 1978 bylaws state at Article III, Section II:

> The Board of Directors shall, initially, serve without pay. If, however, such funds should become available, Board members may be reimbursed, at a reasonable rate, for the time and expense of serving on the Board.

This provision does not provide for payment for research time, but only allows reimbursement for time served as a director. Several witnesses testified that they hoped to receive reimbursement if the Cow Creeks prevailed on their claim against the government.

The most reasonable interpretation of the evidence is that many people volunteered money, time and effort to enable the Cow Creeks to gain recognition and prevail on their claims. Bob Buschmann undoubtedly contributed many hours of his time, but the preponderance of the evidence is that he volunteered this time.

Bob Buschmann concedes that he is not seeking redress against the recognized tribe or the corporation. He asserts that defendants Shaffer, Jackson, Michaels, Ellis Buschmann,

Whittlesey and Beckham converted his research product or were unjustly enriched by the research. Bob Buschmann did not submit any evidence to prove why Shaffer, Jackson, Michaels or Ellis Buschmann benefited for his research, distinguishable from any other Cow Creek, or that they converted his research product. His claim for recovery against these defendants fails.

Bob Buschmann testified that Whittlesey and Beckham used his research product for their profit during the Court of Claims litigation. Bob Buschmann asserts that his research made their job "easier". Whittlesey and Beckham did receive compensation for their work in the Court of Claims. However, Bob Buschmann could not specifically identify which portions of his research these two defendants used.

Beckham had researched Western Oregon Indians for many years, and he testified that he had to correct several assertions Bob Buschmann had made in the brief submitted to Congress for the Court of Claims legislation. Finally, even if Beckham and Whittlesey had used citations from Bob Buschmann, which plaintiff did not prove, Buschmann's research that was reflected in his brief became public record when he submitted the brief to Congress. He did not retain any proprietary interest in this research. Therefore, Bob Buschmann has not proved that he is entitled to recover money from anyone for his research time.

IV. DEFENDANTS' LIBEL COUNTERCLAIM

Defendants Shaffer, Jackson, Michaels and Beckham seek damages from Bob Buschmann for the alleged libel in the newsletters

he sent in September, 1984, January, 1985, and April, 1985. They seek an injunction against further libel, and rely on all the newsletters including the ones sent in July, 1985 and February, 1986.

In Hinkle v. Alexander, 244 Or. 267, 417 P.2d 586, 587 (1966), the Oregon Supreme Court adopted the Restatement of Torts definition of defamation by libel:

> One who falsely, and without a privilege to do so, publishes matter defamatory to another in such a manner as to make the publication a libel is liable to the other although no special harm or loss of reputation results therefrom.

A. Publication

Bob Buschmann admits that he wrote and published all the newsletters.

B. Analysis of the publication

In Worley v. Oregon Physicians Service, 69 Or.App. 241, 686 P.2d 404, 406 (1984), petition for review denied 298 Or. 334, 691 P.2d 483 (1984), the court stated:

> A defamatory statement is one that subjects a person to hatred, contempt, or ridicule or tends to diminish the esteem, respect, goodwill, or confidence in which she is held or excites adverse, derogatory or unpleasant feelings or opinions against her .... The court determines whether a statement is capable of defamatory meaning .... A statement that a person has committed theft is defamatory as a matter of law. [citations omitted]

All the allegedly libelous statements in the newsletters clearly refer to these defendants. Under the definition set out in

Worley, Bob Buschmann's statements in the September, 1984, and January, 1985 newsletters are defamatory about these defendants. It is defamatory to call people "thieves, liars and cheats" and state they they are "defrauding" others. See Worley, supra and Murphy v. Hurty, 238 Or. 228, 393 P.2d 206, 214 (1964). I find that Bob Buschmann's statement in the April, 1985 newsletter that "the Cow Creek Tribal Decendants (sic) has and is being sold down the river" is not as clearly defamatory, but is more like hyperbolic rhetoric.

The accusation in the July, 1985 newsletter that these defendants and others have pending criminal charges against them is the most defamatory and outrageous statement.

C. Privilege

Bob Buschmann contends that two separate "privileges" protect him: the "legislative comment" privilege and the "public figure" speech privilege. Neither privilege protects the alleged libel.

1. Legislative comment privilege

The alleged libel in the newsletters is not fair comment on "legislative process" by a public body. See Adamson v. Bonesteele, 298 Or. 815, 671 P.2d 693 (1983) and Noble v. Ternyik, 273 Or. 39, 539 P.2d 658 (1975). The tribe is not a federal, state or local governmental entity, and Bob Buschmann is not an official representative of the entity.

2. Public figure speech privilege

This privilege involves the relationship between

state defamation and First Amendment freedoms of speech and press. In New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 726 (1964), the Supreme Court held that the Constitution

> prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice" - that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

The Supreme Court extended this standard to include "public figures" who sue media defendants for defamation. Curtis Publishing Co. v. Butts, 388 U.S. 130, 87 S.Ct. 1975 (1967).

Gertz v. Robert Welch, Inc., 418 U.S. 323, 94 S.Ct. 2997, 3009 (1974) defined a "public figure":

> For the most part those who attain this status have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment.

Gertz held that the New York Times standard did not apply to private individuals who sue media defendants for libel. However, a state cannot permit a private individual to recover presumed damages unless the individual proves defendants' actual malice. The private individual may recover actual damages under a lesser standard, though.

In Dun & Bradstreet v. Greenmoss Builders, Inc., _____ U.S. _____, 105 S.Ct. 2939 (1985), a plurality opinion held that Gertz did not apply when a private person sues a non-media defendant for defamation about a private concern. In that situation, state law can properly allow recovery of presumed damages without plaintiff proving defendants' "actual malice", because the First Amendment concerns are not as strong regarding private speech. To properly analyze Bob Buschmann's asserted privilege, the court must determine the status of the parties and the nature of the controversy.

Bob Buschmann is not a "media" person as contemplated in Gertz and New York Times. He is a private individual who allegedly published libelous statements. The Supreme Court has never specifically ruled whether non-media defendants are protected by either New York Times or Gertz. Hutchinson v. Proxmire, 443 U.S. 111, 99 S.Ct. 2675, 2687 n. 16, and see Philadelphia Newspapers Inc. v. Hepps, _____ U.S. _____, _____ S.Ct. _____, slip op. at 12, note 4 (4/21/86). The Oregon Supreme Court has held that Gertz does not apply to non-media defendants. Harley-Davidson Motorsports, Inc. v. Markley, 279 Or. 361, 568 P.2d 1359 (1977).

The alleged controversy, as stated in the newsletters, apparently involves how the tribe is handling its money, and various other tribal matters. This is not a "public" controversy. In Waldbaum v. Fairchild Publications, 627 F.2d 1287, 1296 (D.C. Cir. 1980), cert. denied, _____ U.S. _____, 101 S.Ct. 266 (1980, the court discussed this issue:

> A public controversy is not simply a matter of interest to the public; it must be a real dispute, the outcome of which affects the general public or some segment of it in an appreciable way. The Supreme Court has made clear that essentially private concerns or disagreements do not become public concerns or disagreement simply because they attract attention. Time, Inc. v. Firestone, 424 U.S. 448, 454-55, 96 S.Ct. 958, 965-66, 47 L.Ed.2d 154 (1976). Rather, a public controversy is a dispute that in fact has received public attention because its ramifications will be felt by persons who are not direct participants.

Bob Buschmann did not submit sufficient evidence to prove that the matters he raises in the newsletters are of concern to anyone other than those claiming Cow Creek ancestry, and a few others including Beckham and Whittlesey. Consequently, it is a "private" matter regarding the tribe.

These defendants are not public officials. An Indian tribe is a separate sovereignty. See Puyallup Tribe v. Washington, supra and U.S. v. U.S. Fidelity and Guaranty Co., supra, and as such it cannot be considered a "public" body, that is, a federal, state or local governmental entity. Therefore, its leaders are not public officials.

In addition, these defendants are not public figures under the Gertz definition. Shaffer, Jackson and Michaels had voluntarily thrust themselves into the operation of the tribe, but the evidence does not clearly show their actual participation in the matters discussed in the newsletters. Beckham has been involved with the tribe, but the tribe hired him as a consultant. He was not a volunteer. The real difficulty is

that the matters in the newsletters do not concern a "public controversy" as required under Gertz. The internal affairs of a recognized indian tribe cannot generally be considered a public controversy.

Therefore, this case involves private libel plaintiffs against a non-media defendant on matters of private concern. Dun & Bradstreet, supra, controls and Oregon's general common law dictates the outcome of this case. Bob Buschmann has failed to prove that any privilege protected the disputed statements.

D. Falsity

The Supreme Court recently extended the Gertz rationale and held that a private libel plaintiff must prove the falsity of an alleged defamation on matters of public concern by a media defendant. Philadelphia Newspapers v. Hepps, supra. The court did not consider "what standards would apply if the plaintiff sues a nonmedia defendant". Slip op. at 12, note 4.

Hepps does not apply to this case because Bob Buschmann is a nonmedia defendant, see Harley Davidson Motorsports, Inc. v. Markley, supra, and because this case involves a private matter with private individuals. See Dun & Bradstreet, supra.

In Oregon, a libel defendant must prove the truth of the statements. See Grubb v. Johnson, 205 Or. 624, 289 P.2d 1067 (1955). Bob Buschmann failed to carry this burden because he did not submit any evidence about the truth of the statements.

E. Damages

Neither New York Times, nor Gertz and Hepps apply to this case. The state rules apply. These defendants did not submit any evidence about actual damages, and accordingly, I do not award actual damages. However, under Oregon law, injury is presumed if the statements are found to be defamatory. Hinkle, supra.

I have carefully reviewed all the newsletters and the entire record. The evidence is that the tribe and Beckham all know about Bob Buschmann's numerous past complaints about the tribe and the positions taken by these defendants. In this context, and given that Bob Buschmann published these statements only to the tribe, a large damage award is not appropriate. Accordingly, I award each of these four defendants the total sum of $200 against Bob Buschmann for the three libel counts.

F. Injunction

Injunctions or prior restraint on publication of matters of public interest are generally disfavored. See Near v. Minnesota, 283 U.S. 697, 51 S.Ct. 625 (1931). I have found that the matters in Bob Buschmann's newsletters involve a private tribal controversy. His use of the terms "liars, cheats and thieves" and "fraud" is libelous. I have awarded damages for that libel. Defendants did not seek damages for the statements in the September, 1985 newsletter, but the criminal complaint allegations are especially egregious.

Therefore, Bob Buschmann is enjoined from using the

above terms and from accusing defendants of criminal conduct, if he cannot prove those statements. The court cannot dictate the content of any other newsletters, but the evidence indicates Bob Buschmann could better use his talents by being less caustic and more constructive in his written comments.

V. CONCLUSION

The corporation properly required a written application for corporate membership, and properly adopted a written corporate roll, which excluded plaintiffs. However, based on the evidence, this is a corporate roll, not a roll of the recognized tribe.

The corporation did not properly adopt the 1981 bylaws, and the record does not show that the recognized tribe has adopted these bylaws as the governing document under 25 U.S.C. § 712b, although the Department of Interior may choose to recognize them as such for the interviewing period.

Plaintiff Bob Buschmann failed to prove that he should recover a judgment from anyone for his research time.

Defendants Shaffer, Jackson, Michaels and Beckham should each receive the sum of $200 from Bob Buschmann for the libel. Bob Buschmann is enjoined from using similar libel in any other publications.

The court commends the Cow Creek people for its long struggle to gain redress and recognition. Many people have cooperated and worked very hard to accomplish this.

Both sides of this present controversy share part of the blame for the current difficulties among those claiming Cow Creek

ancestry. Plaintiffs, especially Bob Buschmann, have sometimes taken the attitude that they were solely responsible for the tribe's successes. Conversely, the tribal leaders have reacted and arguably unfairly denied at least corporate membership to Bob Buschmann's minor child. Both sides should reassess their positions for the good of the tribe. As a wise man once said, a "house divided against itself cannot stand". The Cow Creeks have fought too long to gain recognition to allow internal problems to dominate their future.

The parties shall bear their own costs in this matter.

DATED this 28th day of July, 1986.

Michael R. Hogan
UNITED STATES MAGISTRATE

NAOMI (RAINVILLE) GOULD
P.O. BOX 2402 • EUGENE, OREGON 97402
(503) 345-3426

August 18, 1986

FEDERAL EXPRESS

Senator Mark Andrews, Chairman
Senate Select Committee on Indian Affairs
SH-724
Washington, D. C. 20510

Re: H.R. 3214 and amendments---"To provide for the use and distribution of funds awarded to the Cow Creek Band of Umpqua Indians in United States Claims Court docket numbered 53-81L, and for other purposes".

Dear Senator Andrews:

First, I want you to know I am very grateful to you and the committee for the opportunity of appearing and testifying at the Hearing August 6, 1986 regarding the above-referenced subject.

The following listed information is submitted for your consideration now that the Hearing is past:

1. Statements from: Rose Deardorff, Edna M. Hagen, Alice Hayzlett, Janey LaChance Heussner, Louis LaChance, Amaryllis Freeman Young and John Young.
2. Motion dated August 8, 1986 filed in United States District Court for the District of Oregon by Mr. Dennis J. Whittlesey, Attorney.
3. Memorandum in Opposition to Mr. Whittlesey's Motion filed August 14, 1986 by Mr. Phil Studenberg, Attorney.
4. News release from News-Review, Roseburg, Oregon, dated August 10, 1986.
5. News release from The Register-Guard dated August 14, 1986.

Due to the high cost of printing and mailing and the fact that I do not have access to Tribal funds and Federal grant monies, I have not supplied all material to all concerned. I am sure you will be able to share the information.

The second page of this letter will reveal my opinions of some of the testimony offered August 6, 1986.

Statement of Congressman Jim Weaver: At the time of the Hearing, I did not know about Jim's plan to retire from the Senatorial campaign. I feel that his statement was brief due to the fact that he has not had the "personal" contact with H.R. 3214 that others have.

Testimony of Dr. Stephen Dow Beckham: I still must disagree with Steve over the ancestry of the Thomason Family, the fact that the Rainvilles were not in the area until the late 1880's and the Flathead situation. I do not wish to go into detail over these issues as it has been done so many times before but when the time arrives, I am sure these matters will be straightened out.

Testimony of Sue M. Shaffer: Here again, I must challenge the Thomason Family ancestry. I cannot agree with her discussion on the preparation of the distribution plan and the fact that the May 19, 1985 vote was by "secret" ballot.

Testimony of Dennis J. Whittlesey: The part on the first page regarding the litigation is not exactly true. Mr. Whittlesey and Dr. Beckham became involved with the Cow Creeks after we had testified June 14, 1979 on the land claims case. All material used at this hearing was prepared by other people. There is a lot of controversy (on Mr. Whittlesey's part) regarding the Opinion in the case of Robert L. Buschmann, et al. v. Cow Creek Band of Umpqua Tribe of Indians, Inc., et al., Civil No. 85-6137-E. When the final judgment is awarded in this case and the matter of the latest Motion that has been filed is all brought together, I am sure the final verdict will put an end to this long, tiresome trend of events.

In closing, I still oppose H.R. 3214 and amendments. I want to see a fair, honest and equal plan for all true descendants of the persons living in the Cow Creek area prior to the Treaty of 1853. I want a roll, beneficiary list or "whatever" to be correct and reveal the legitimate descendants. I do not want to go through another Enrollment Project like the one conducted by Dr. Stephen Dow Beckman. I worked over 10 months on that project under the direction of Dr. Beckham and as far as I am concerned it was a waste of over $50,000.00. The information available at the present time is: No one seems to know where the documents are; members are refused requests to see their own family records: it is not known for sure what records were used---the true records of family records or those records prepared by Dr. Beckham. This project was completed (final date) on September 30, 1985 and the completed work was supposed to be turned over to the B.I.A. To date, this has not been done and I don't believe this is a very honest way to spend Federal money.

I know that under good management the Cow Creeks could become self-supporting and look forward to many years of a "well-rounded" existence.

Thank you again for all of your time, patience and consideration in this matter. The Honorable Michael R. Hogan, United States Magistrate, in his closing remarks of the Opinion dated July 28, 1986 on Civil Case No. 85-6137-E quoted: "As a wise man once said, a house divided against itself cannot stand". The Cow Creek Teepee is a "house" divided and will never stand as long as there is a division of people---those who truly belong and those who do not.

Very truly yours,

Naomi R. Gould

Naomi Rainville Gould

NRG:pdm
Encls.

cc: Senator Slade Gorton
Senator Barry Goldwater
Senator Frank H. Murkowski
Senator John Melcher
Senator Daniel K. Inouye
Senator Dennis DeConcini
Ms. Patricia Zell-Cox, Staff Attorney
Mr. Ross Swimmer, Assistant Secretary - Indian Affairs
Senator Mark Hatfield
Senator Bob Packwood

COMMENTS OF ROSE DEARDORFF

In opposition of H.R. 3214 and amendments

August 13, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I want to thank you for the opportunity of giving written testimony at the Hearing, Wednesday, August 6, 1986. The following remarks are some concerns of mine after the hearing.

First---On the first page of Mr. Whittlesey's testimony he states: "I represented the Tribe in the litigation the settlement of which resulted in the award to the Tribe of the judgment fund which H.R. 3214 would distribute". I must disagree with Mr. Whittlesey. Mr. Robert Thomas, attorney for the Tribe at that time, through his office and with the assistance of others prepared the extensive family history books, the background and historical data, the case briefs and the testimony for those who went to Washington, D. C. and testified regarding the land claims case on June 14, 1979. At a meeting after the delegates returned Mr. Thomas told us about Mr. Whittlesey claiming that he had more experience in Indian law and suggested that the Tribe hire him---this came about and Dr. Stephen Dow Beckham became active at the same time.

Second---Dr. Stephen Dow Beckham repeatedly brings up the ancestry of the Rainville Family and that they were not in the area until the late 1880's. I am not a researcher but we are all aware of the history of this family and have many records to prove their inhabitation prior to the Treaty of 1853. Another thing that Dr. Beckham brings up is--- The Flathead connection with the Rainvilles and Rondeaus. There is documented evidence from the B.I.A. that these descendants are not of Flathead lineage and are unenrolled members for the sole purpose of identity. This information is on file with the B.I.A. and can also be furnished upon request.

Third---Dr. Beckham is always concerned with the David N. LaChance family descendants claiming that they do not qualify because Grandpa LaChance was a beneficiary of the Western Oregon Termination Act. This again is not true and the family has information to support their claim.

I still oppose H.R. 3214 as strongly as ever and whole-heartedly support the testimony given by Hazel Elbert, Deputy to the Assistant Secretary - Indian Affairs (Tribal Services).

Rose Deardorff

COMMENTS OF ALICE HAYZLETT

In opposition of H.R. 3214 and amendments

August 13, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

As an enrolled member of the Cow Creek Band of Umpqua Tribe of Indians, I oppose H.R. 3214 and amendments because there are many descendants left off the roll and there are persons on the roll who do not belong. As an example, my sister Lupe Newton and her children, were at one time approved by the Board of Directors for membership on the Supplemental Roll, but were later removed from the roll. Why should I support and approve legislation that will not benefit all of my family?

In my opinion this bill serves a grave injustice towards legitimate membership and takes away the rightful inheritances.

In conclusion, I believe we need to adhere to Public Law 96-251 and come up with some solution to the membership problem. I believe per capita distribution would be fair to all. I am not even in favor of 20% going to the Tribe because it would go for professional assistance, paying for the Evergreen Motel and other ventures that do not involve the entire membership. I do not feel that everyone should be penalized for the greed and mistakes of a few.

Thank you for your consideration.

Respectfully submitted,

Alice Hayzlett

COMMENTS OF EDNA M. HAGEN

In opposition of H.R. 3214 and amendments

August 13, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I oppose H.R. 3214 because it completely ignores Public Law 96-251 dated May 26, 1980 and the Cow Creek Recognition Act of December 29, 1982 (Public Law 97-391) in that the two laws state that a tribal member must prove his descendancy back to 1853 in order to be a beneficiary. H.R. 3214 leaves the judgment funds to the exclusive use of the Tribe. There are people in the Tribe who are not Cow Creek descendants and there are a lot of people left out of the Tribe who are legitimate descendants. Therefore, at this time the Tribe is not a descendant entity.

I feel that we need to work with B.I.A. to obtain a correct and true membership roll which would insure that only the rightful descendants benefit from any judgment funds which would be awarded.

Edna M. Hagen

COMMENTS OF JANEY LaCHANCE HEUSSNER

In opposition of H.R. 3214 and amendments

August 13, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I want to thank you for being able to attend the Hearing that was held August 6, 1986.

I am still opposing H.R. 3214 and amendments because of what this legislation has done to the membership of the Cow Creek Band of Umpqua Tribe of Indians. Public Law 96-251 and Public Law 97-391 were developed with the thought in mind that all true Cow Creek people would be treated fair and equal.

I favor per capita distribution because the beneficiaries would be determined by the B.I.A. and this would put a stop to those who do not belong and it would open the door for the people who have been left out.

Thank you for your time and consideration of this matter.

Respectfully submitted,

Janey LaChance Heussner

COMMENTS OF LOUIS LaCHANCE

In opposition of H.R. 3214 and amendments

August 13, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am an enrolled member of the Cow Creek Band of Umpqua Tribe of Indians. I would like to make the comments regarding my feelings of opposition of H.R. 3214 and amendments in the following form:

Like many, many other members, I did not have a chance to review the language that became Public Law 96-251 and Public Law 97-391---the Land Claims Act and the Recognition Act. I have always felt that everyone was working for the general good of all of the membership. I am well satisfied with both of the bills. However, it is the happenings since that I strongly oppose. H.R. 3214 and amendments protects the people who should not be considered Cow Creek people and it leaves off many people who should be entitled to the same benefits as any other true descendants of those ancestors who were in the area prior to the signing of the Treaty in 1853.

I favor a per capita distribution and would like to have assistance in determining the true membership. Thousands of dollars went to Dr. Stephen Dow Beckham for an extensive Enrollment Project. Today, these records are not available to Tribal members, there is a question to their whereabouts and the work-up on many families was not correct. Everything was done during the work on this project to build up the Thomason Family as the family with the strongest claim and all of the other families know, as well as, the B.I.A. that these people (Thomasons) were not inhabitating the Cow Creek area prior to the Treaty of 1853.

Respectfully submitted,

Louis LaChance

Senator Mark Andrews, Chairman
Senate Select Committee on Indian Affairs
SH-724
Washington, D. C. 2051.

August 11, 1986

Dear Senator Andrews,

I want to thank you again, for conducting a very fair Hearing on August 6, 1986, regarding H.R. 3214. Any questions you asked were in a respectful manner. The following are my comments on some of the testimonies given.

I can say only one thing for Congressman Jim Weaver's testimony. It is my strong belief that he is only interested in getting his Bill passed and not in the best interest of the Tribe.

My testimony back there gives the reason for my objections to the amendments, that the changed wording didn't really change anything in the original Bill.

Mrs. Shaffer's testimony says there is just a small portion who disagree with the plan. This is not entirely true, only a small portion of the Tribe even had the opportunity to vote. I believe the volume of written objections proves the opposite, as well, that quite a few disagree.

Mr. Whittlesey keeps referring to the "tribal roll". There is no recognized official tribal roll, only a Corporate Roll/List, so Interrogatory 14 should be stricken from the Bill. Also, he did not state all of the court's opinions. Unfortunately, the court left room for interpretation. I feel the Committee should study the court's opinion very closely and form thier own conclusions.

I think Hazel Elbert's testimony was fair, although perhaps not all the tribal members will agree. Even if the Tribe recieves 100% of the money, there are those who are listed on the Interrogatory 14, roll who do not qualify according to P.L. 96-251. Quite a few of us have done extensive research on our own to protect ourselves from our own researcher, Dr. Stephen Dow Beckham.

Dr. Beckham, as you can plainly see in his testimony, he does testify against some of the tribal members. (I thought he was supposed to protect the Tribe.) I am a LaChance descendent and I have letters stating Dad, David Narcisse LaChance did not get a Western Oregon Indian Judgment payment. This really doesn't matter to me. Money doesn't mean that much to me. I want justice for all the people. Dr. Beckham testified Naomi Gould's ancestors didn't appear until the 1880's. I'm sending pictures from the Rondeau Cemetary and testimony on the bottom from John Young that will dispute Dr. Beckham's testimony. Since Dr. Beckham is not a tribal member, I can't feel that he can have the Tribe's best interests at heart. He also states Mrs. Gould is

still connected to the Flathead Indians and recieves payments. I can name you alot of people who recieve these payments, including present Board members. This is an inhertance and does not wipe out any Cow Creek Umpqua blood. Also, Dr. Beckham says none of us can prove descendency to the 1853 Treaty signers. Alot of records were either lost or destroyed and our Land Litigation Law, P.L. 96-251, says descendents of people considered to be of this Tribe, it does NOT say, descendents of the Treaty signers. It further says we must prove residency back to or before the signing of the Treaty. Is he trying to cut our throats? He also says in his testimony that the B.I.A. says we can't prove this. In reading Hazel Elbert's testimony, she refers back to our Litigation Law (people considered to be) and blood descendents and further, proving residency back to 1853. There is nothing about the Treaty signers in her testimony. I can't quite understand what Dr. Beckham means. He also refers to two families going back before the Treaty date, Nonta, Sue Shaffer's ancestor, Alexander and Josette (Finlay) Dumont, but he does not connect me to them. I am a descendent of this couple.

I have in my possession, a stack of land grants on Alexander and Josette Dumont, to prove that I and my family date back to before the signing of the 1853 Treaty.

Please enter my statement into the record.

Thank you,

Amaryllis Freeman Young

Amaryllis Freeman Young

P.S. If this bill isn't amended where it is fair to everyone. Then I ask that it be tabled or killed until a fair one can be written, thank you again.

Senator Mark Andrews, Chairman
Senate Select Committee on Indian Affairs
SH 838
Washington, D. C. 20510

August 12, 1986

Dear Senator Andrews,

I was asked by my wife, Amaryllis Freeman Young who testified at both the House and the Senate Hearings on H.R. 3214, to tell the family history of the origin of the Rainville family name, as it was told to me.

My Great Grandmother, Clementine Rondeau had two sisters, maybe more. One sister married a Flathead Indian and went to the Flathead Reservation. The other sister married a man by the name of Rainville and became known to us kids as Auntie Rainville. These girls were born and raised on upper Graves Creek, in the same area where an Indian massacre occured. The story goes, the white settlers invited this family group of Indians in for a feast, pretending to be thier friends. While they were eating in this shed, the whites slipped out and bolted the doors, then shot the men and older boys through knot holes in the walls. The girls and some of the younger woman were kept by the settlers. The older women and boys were taken to the Grand Ronde Reservation during the roundup of the Indians of this area. It is my understanding that my Great Grandmother, Clementine Rondeau did not really know who her blood father was. She went by two different names, but she knew her mother. Auntie Rainville was some 14 or 15 months older than my Great Grandmother. Auntie Rainville's tombstone shows she was born in 1850, other records differ somewhat, but all show she was born in the 1850's. It is also my understanding that these two families, the Rainvilles and the Tom Rondeau family have blood reletives who descend from the original Cow Creeks who were put on the Grand Ronde Reservation during the roundup of Indians in Southern Oregon and who are now part of the Confederated Tribes of the Grand Ronde.

It is my belief that Dr. Beckham is a smart, well educated man. The Tribe hired him to do research for them. In the House and the Senate Hearings, he tries to disqualify the Rainville family, they are one of the six families who are all blood related back and forth, through the time of white man's history. In the same testimony he qualifies a family, the Thomason family, who are not related to any of the other six families, until in the 1900's. This in itself, tells a story. I am not a researcher, but all the records I have, shows this family did not come to the Cow Creek lands until after the signing of the Treaty with the Cow Creeks in 1853. In fact, all the records I have shows this family descends from Canadian Indian blood.

I do not understand why Dr. Beckham testified as he did. My wife and I took pictures at the Rondeau Cemetary near Tiller, Oregon, which clearly shows the dates on the tombstones and accompany my letter.

There is more family history on my ancestors, Tom and Clementine Rondeau. Dr. Beckham did not question my Indian ancestry, so I'll stop there.

Shortly after we were Federally Recognized, Dr. Beckham was hired by the B.I.A. to do research on the Tribe prior to the 1900's and establish blood quantums. Setember of last year this finished material was in the Tribal office. A group of us went there to see it. Dan Andrade was the Tribal Manager then. He said this material was nothing but a bunch of garbage and should be destroyed. Shortly after this, he was fired. The Manager's position was then given to the Tribal Chairman, Sue Shaffer's daughter, Sherri. Since then, we have written numerous letters to the Tribal office, to the B.I.A. and to this date, we have not seen this material. The B.I.A. says they don't have it nor have they seen it. This work was paid for with B.I.A. funds and as Recognized Tribal members, we have a right to see it. Because of this secracy, plus what the previous Tribal Manager told us, plus Dr. Beckham's testimony, I would question the validity of this material.

I have already put in written testimony against H.R. 3214, so I'll not repeat myself.

We have asked for Senator Hatfield's and Senator Packwood's help numerous times in the past and have recieved it. We have been Federally Recognized since December 29, 1982. There has been hundreds of thousands of dollars that have gone through our Tribal office, for administration, yet the Tribe, as a whole have seen very few services and most, absolutely nothing. Most have the limited services gained through recogniztion, such as health services. What are they administrating and at what percentage for administrative costs? Where has the money gone? What are the salary ranges, plus fringe benefits for each paid employee? We cannot get the answers to these questions.

Sincerely yours,

John A Young

John A. Young

MOTHER
ADELAIDE RAINVILLE
1850 — 1930

FATHER
DIDACE RAINVILLE
1847 — 1930